N. 2927

No. 14656

United States
Court of Appeals
for the Ninth Circuit

See vols 2926 - 2928

HANS FORSTER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

(In Six Volumes)

VOLUME IV.

(Pages 1401 to 1868, inclusive)

Appeal from the United States District Court for the Western District of Washington, Northern Division

FILED

DEC - 2 1955

PAUL P. O'BRIEN, CLERK

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(Testimony of Hans Forster.)

Mr. LeSourd: I will object to that as leading.

The Court: Objection sustained.

Mr. Griffin: May I read the cost from the exhibit, if the Court please?

Exhibit 13, under the heading "Less Cost of Goods Sold".

Mr. Moriarty: What year?

Mr. Griffin: 1948. $2,216,589.13; and the same line in Exhibit 14, 1949, $2,034,235.32.

Q. (By Mr. Griffin): And on the basis of that, you suggested that Mr. Taylor recheck his figures?

Mr. LeSourd: Objected to as leading.

Mr. Griffin: Objected to.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Did you, on the basis of that, [3152] suggest that Mr. Taylor recheck his figures?

Mr. Moriarty: Objected to.

Mr. LeSourd: Objected to.

A. Yes, as stated before——

The Court: The question was answered.

Mr. Moriarty: I move it be stricken.

The Court: I think we will save time to let it stand.

Mr. Moriarty: Very well.

Q. (By Mr. Griffin): Mr. Forster, do you know anything personally about the Federal Tax Laws outside of the fact that you paid taxes?

A. No, I didn't; I never went into it. If I went into it, I wouldn't know anything about it.

Q. Do you know anything about tax returns?

(Testimony of Hans Forster.)

A. No, Mr. Taylor handled all my taxes, so I didn't have anything to do with them.

Q. Do you know anything about the consequences, so far as taxes were concerned, of business transactions; personally, I mean?

A. No.

Q. Did you know anything about the tax situation of your owning 100 percent of the Issaquah Creamery Company and selling to Alpine, or——

Mr. Moriarty (Interposing): Objected to as leading, and not proper redirect. It was gone into thoroughly on direct.

Mr. LeSourd: I will object.

The Court: Objection sustained.

Mr. LeSourd (continuing): ——to this whole method of questioning, that it is all leading.

The Court: The questions are leading.

Mr. Griffin: They are, and on redirect there is one purpose of redirect, and it is generally leading, for your "yes" or "no" answers, but I can approach it the long way.

Q. (By Mr. Griffin): Did you have any education or training of any kind to fit you to determine any of those problems?

Mr. Moriarty: Objected to as not proper redirect and calling for a conclusion of the witness.

The Court: Objection overruled.

A. No, I never had any training.

Q. (By Mr. Griffin): Now, Mr. Moriarty examined in some detail in regard to various items out of the ordinary course of business income.

(Testimony of Hans Forster.)

Mr. Griffin: May I see exhibits 142, 149 and 150, please? [3154]

The Court: What are those numbers again, Mr. Griffin?

Mr. Griffin: 142, 149 and 150.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): Exhibit 142, Mr. Forster, are Alpine Dairy checks——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): ——are Apex Farms, Incorporated—Apex Dairy, Incorporated, checks, all payable to Issaquah Creamery.

Was Mr. Taylor the auditor of Apex Dairy, Incorporated, and Apex Farms, Incorporated?

Mr. LeSourd: Objected to as assuming he is an auditor. There was no testimony to that effect.

Q. (By Mr. Griffin continuing): Was the defendant, L. Hicks Taylor, the individual who maintained the books of Apex Farms, Incorporated, and Apex Dairy, Incorporated?

A. Yes, he was secretary and treasurer and accountant for Apex Farms. [3155]

Q. And was he secretary, the same L. Hicks Taylor that was secretary of Issaquah Creamery?

A. That is right.

Q. Did it ever occur to you to tell L. Hicks Taylor about the checks from Apex Farms to Issaquah Creamery?

Mr. Moriarty: Objected to as not proper redirect.

(Testimony of Hans Forster.)

Mr. Griffin: It was examined in detail.

The Court: Objection overruled.

Mr. Moriarty: Yes, but these were deposited in his account, and Mr. Taylor doesn't know anything about that. That is what I examined.

The Court: Mr. Forster.

Mr. Griffin: At this point, I am prepared to call counsel for the Government to the witness stand on the statement that L. Hicks Taylor knows nothing about account 198? I don't think you meant that. I hope not.

Mr. Moriarty: If that was the inference, I mean deposited at the time in 198?

Mr. Griffin: All right.

Mr. Moriarty: I am making no contention in the matter except as to proof.

Mr. Griffin: All right. [3156]

Q. (By Mr. Griffin): Objection is overruled.

A. I figured Mr. Taylor knew all about the bookkeeping and checks that was between the different companies, of Apex Farms, or Alpine Dairy, and Finstad and Utgard, that he was accountant and secretary and treasurer for.

Q. You have answered the question broadly, but I want to take these up that Mr. Moriarty took up in the same way.

Exhibit 149 are checks from Finstad and Utgard to Mary Finstad. Was the same situation existing there as you just testified to as between Apex Farms and Issaquah Creamery?

(Testimony of Hans Forster.)

Mr. Moriarty: Object to the form of the question.

Mr. Griffin: I will reframe the question.

Q. (By Mr. Griffin continuing): Was this the same L. Hicks Taylor that was the accountant for Finstad and Utgard? A. That is right.

Q. Did you have any—did it occur to you to advise Mr. Taylor about the existence of the checks, or their payment? A. No. [3157]

Mr. Moriarty: Objected to as not proper redirect.

Mr. Griffin: Just a moment. Don't answer until the Court rules on the objection, please.

The Court: Well, the objection is overruled.

A. (Continuing): No.

Q. (By Mr. Griffin): Exhibit 150 is another group of checks from Finstad and Utgard to Issaquah Creamery. The same situation exists there?

A. That is right.

Q. These are all checks that went into account 198, are they not?

A. That is what——

(Whereupon, there was a brief pause.)

Mr. Griffin: Let me have Exhibits 203, four, six, seven, eight, ten, eleven.

Q. (By Mr. Griffin): Then the checks I was referring to, referring to the Issaquah Creamery Company checks payable to Issaquah Creamery Company and are those payable to Mrs. Finstad?

The Court: That was in connection with Exhibit 150? [3158]

Mr. Griffin: 150, yes.

(Testimony of Hans Forster.)

Mr. LeSourd: Just a moment. Just a moment, this witness on the stand under oath has testified now with regard to the checks payable to Mrs. Finstad that he didn't consider it necessary to advise Mr. Taylor. I think that testimony should stand in this case.

The Court: I don't know, Mr. LeSourd, that there is any action otherwise.

Mr. LeSourd: I thought he was trying to have that stricken.

The Court: No.

Q. (By Mr. Griffin): Exhibit 204 are three checks signed by Mr. Schneider and yourself to Schneider, Baskett and Baskett; 206—pardon me, 204 are two checks signed by Schneider and L. Hicks Taylor to Baskett and Schneider. 206 are checks signed by Schneider and Taylor to Schneider and Baskett. 207 are two checks signed by Schneider and Taylor to Schneider and Baskett.

Now, did it occur to you to advise Mr. Taylor anything in regard to these checks?

Mr. Moriarty: Objected to as leading and not proper redirect. [3159]

The Court: This calls for a "yes" or "no" answer.

Mr. Griffin: That is right.

The Court: May I inquire, these are all deposits in 198?

Mr. Griffin: No, these are not all deposited in 198. They deal with these payments received as a

(Testimony of Hans Forster.)

result of these checks, the proceeds of which went into 198, not the checks themselves.

Mr. Moriarty: Part of the proceeds went into the Peoples Bank at Renton, also.

The Court: These went into the savings account?

Mr. Griffin: The proceeds he received from these checks, as a result of these checks, went into one of the two savings account. I think that is a fair statement.

Mr. Moriarty: 198 and the Peoples at Renton.

Mr. Griffin: Right.

The Court: The Court will overrule the objection on that one question.

A. No, I never figured I had to, because he wrote the checks, and he made the distribution.

Q. (By Mr. Griffin): Exhibit 208 are checks, Renton Ice and Ice [3160] Cream Company, to Mr. Schneider and Baskett, to which is attached this note that Mr. Taylor says the total is $7,520.

Mr. Moriarty: I don't know whether Mr. Griffin is testifying or framing the question.

Mr. Griffin: I haven't completed it, because I think it is proper to describe an exhibit if I do it honestly.

Mr. Moriarty: The proper way is to hand the exhibit to the witness and ask him what his recollection is.

Mr. Griffin: I will complete my question, if I may.

The Court: You may proceed.

Q. (By Mr. Griffin): Calling your attention to

(Testimony of Hans Forster.)
a note, that has been identified, by Mr. Taylor, total $7,520; did it occur to you to advise Mr. Taylor about these checks?

Mr. Moriarty: Objected to as not proper redirect. I didn't examine about the note.

Mr. Griffin: He examined about the checks, if the Court please, and it is one exhibit.

The Court: Do you understand the checks referred to?

The Witness: Yes. [3161]

The Court: All right. Objection overruled. The question is as to whether it occurred to you.

A. I would have to ask Mr. Taylor. Not after he made distribution. He knew the amount of money I was getting.

Q. (By Mr. Griffin): And Exhibit 211 are four checks, Renton Ice and Ice Cream Company, payable to, two to Schneider, and two to Baskett. Is your answer the same as to those checks?

A. That is right.

Mr. Griffin: Let me see 221 and 222, please.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): This same Mr. Taylor was the accountant for Simonson and Forster, was he?

A. (Witness nodded in the affirmative.)

Mr. Moriarty: Objected to as not proper redirect.

The Court: Well, I don't think there is any question involved here. If that issue is questioned,

(Testimony of Hans Forster.)

it may be gone into, but unless it is, the Court will sustain the objection.

Mr. Moriarty: The only thing I examined on [3162] in regard to Simonson and Forster, as I recollect, was a series of checks between Mr. Forster and Oscar Simonson after Taylor had reported to him that Oscar was over $100 on his salary.

Mr. Griffin: And there was no testimony by the witness that the witness arranged anything with Mr. Simonson as to any series of checks.

The Court: Well, that is for the Jury to decide. I am not passing upon that.

Mr. Griffin: Well, if the Court please, the statement of Mr. Moriarty in this courtroom is entitled to weight, and carries weight with me. The Jury is entitled to consider such a statement. There isn't such testimony. He testified to the facts. No arrangement of a series of checks. I must object.

Mr. Moriarty: Maybe we were talking about different things.

The Court: The Court will advise the Jury again that comments of counsel is not evidence, and should be disregarded.

You may proceed, and the objection is overruled.

Mr. Griffin: Thank you.

Q. (By Mr. Griffin): The question was, he was the accountant for Simonson and Forster?

A. He was accountant and secretary-treasurer of Simonson and Forster, yes.

Q. Exhibit 221, also a group of checks, Puyallup Creamery to yourself, each for $100; and 222,

(Testimony of Hans Forster.)

a group of checks, Puyallup Creamery to yourself, each, I believe, for $100—I thought there was another amount in here.

Mr. Moriarty: There was one for two hundred, I believe.

Q. (By Mr. Griffin continuing): Did it occur to you to advise Mr. Taylor anything about those checks? A. No.

Mr. LeSourd: May I ask your Honor to ask Counsel to please frame his questions other than leading?

The Court: Pardon?

Mr. LeSourd: May I ask your Honor to ask Counsel to ask matters other than leading?

The Court: Well, as I understand a leading question, the question answered either by "yes" or "no" is not necessarily leading.

Mr. LeSourd: No, your Honor. [3164]

The Court: Unless Counsel indicates whether it should be "yes" or "no".

Mr. LeSourd: He can ask what occurred to this witness with respect to these matters, what occurred to him mind, but to customarily lead him, I haven't objected to each question, but——

The Court (Interposing): Well, as I gather, the purpose of this examination, it is to only one issue. That is the only question the Court has permitted so far.

Mr. Griffin: That is right.

The Court: And that is whether it occurred to this witness to advise Mr. Taylor as to certain items

(Testimony of Hans Forster.)

deposited in his savings account, and Mr. Moriarty on recross asked the general question as to making the deposits in this account, and also whether it occurred to him to advise Mr. Taylor on certain items, and that is the only questions involved, as I understand it.

Mr. Griffin: Correct.

The Court: And, therefore, the question put in this situation may be properly put in the form asked.

Mr. LeSourd: Very well.

Mr. Griffin: 239, 240, 253, 254, please.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.) [3165]

Q. (By Mr. Griffin): Mr. Forster, Exhibit 239, is a group of checks of Arctic Gardens, Incorporated, signed by L. Hicks Taylor, some payable to you and some to Issaquah Creamery Company, and some to Alpine Dairy.

Who kept the entire books and records of Arctic Gardens? A. Hicks Taylor.

Q. Did it occur to you to advise Hicks Taylor in regard to these checks he had drawn?

A. No, it never did.

Q. Exhibit 240 is another Arctic Gardens check signed L. Hicks Taylor, to Alpine Dairy. Would your answer be the same?

A. That is right.

Q. Exhibit 253 is another check, Arctic Gardens, signed L. Hicks Taylor, to Alpine Dairy; and 254, Arctic Gardens, by L. Hicks Taylor, to Issa-

(Testimony of Hans Forster.)

quah Creamery. Would your answer be the same?

A. That is right.

Q. What did you think as far as the keeping of your income tax returns were concerned by Mr. Taylor who was secretary-treasurer——

Mr. Moriarty (Interposing): I am objecting to the form of the question now, if your Honor please.

The Court: It is not completed.

Mr. Moriarty: The form has already indicated it will be objectionable.

The Court: Well, there is indication it may be, but you may complete the question.

Q. (By Mr. Griffin continuing): What did you think Mr. Taylor was doing insofar as your income tax returns were concerned with reference to these items of income and these checks that he had drawn?

A. I figured he had them all included. As far as I was concerned, he was the one who knew about them, and handled it and I figured everything was all right.

Q. Until this trial, had you ever heard of the Hans Forster Transportation Company?

A. No.

Q. You said that you were familiar with Mr. Taylor's handwriting?

A. I think I am, yes.

Q. Now, I will hand you Exhibit A-18 for identification, which has been identified as Economic Bank Check Register of Finstad and Utgard, and ask you if you can identify the handwriting——

(Testimony of Hans Forster.)

Mr. Moriarty (Interposing): Is that in evidence, Mr. Griffin? [3167]

Mr. Griffin: No, I said for identification.

Mr. Moriarty: Excuse me. I see.

Q. (By Mr. Griffin continuing): ——if you can identify the handwriting under date of January 25, 1944, in this exhibit. There are no page numbers that I see. Your answer to that would be "yes" or "no". A. Yes.

Q. Whose handwriting is it?

A. L. Hicks Taylor's.

Mr. Griffin: Now, I offer in evidence the two items upon this page. I am perfectly willing to offer the whole document, and the whole page—either the whole document or the whole page, but, in any event, the two items upon this page identified by the witness as being Mr. Taylor's handwriting.

Mr. LeSourd: No objection, your Honor.

Mr. Moriarty: We have no objection, if the Court please.

Mr. Keesling: We have no objection.

The Court: A-18 will be admitted, insofar as it relates to the handwriting just indicated by counsel.

(Defendants' Exhibit A-18 admitted in evidence.) [3168]

Mr. Griffin: May I read those, then?

The Court: Yes.

Mr. Griffin: It is headed Economic Check and Deposit Register, Form A, date, payment of, in favor of, number, posted on page, amount of check.

(Testimony of Hans Forster.)

This is under date of January 25, 1944. L. Hicks Taylor, No. 341033—strike that 3410, $50; January 25, 1944, W. S. Grant, payment of—blank in each instance—No. 3411, $6,666.66.

Mr. Moriarty: The date, Mr. Griffin?

Mr. Griffin: January 25, 1944.

Q. (By Mr. Griffin): Do you know what this payment of $6,666.66, to W. S. Grant, was in January, 1944?

A. That was for the purchase of stock of Finstad and Utgard, from W. S. Grant.

Q. Exhibit A-21 is in evidence, and referring to the date, January 26, 1944, can you state in whose handwriting those two items are under that date?

A. Hicks Taylor's.

Mr. Griffin: May I read these two to the Jury, please?

It is the same Economic form of Check Register, the same general form, January 26, 1944, James F. Cook—that is in favor of—in payment of, blank—check No. 136, $3,333.33; Verne Egeness; [3169] payment of, blank; check No. 137, $3,333.33.

Q. (By Mr. Griffin): What were those two items, if you know?

A. In payment of stock.

Mr. Moriarty: This is hardly redirect, if the Court please.

The Court: I believe there was some cross-examination by Mr. LeSourd on those items.

Mr. Griffin: Yes, your Honor.

The Court: Is that correct?

(Testimony of Hans Forster.)

Mr. Brody: As to who drew the checks.

Q. (By Mr. Griffin): Mr. Moriarty, do you recall, examined you upon the checks of Apex Farms deposited by you in Account 198? A. Yes.

Q. In your enterprises, to what was the—which one of the enterprises was Apex Farms a part?

Mr. Moriarty: Objected to as not proper redirect.

The Court: This is a preliminary question?

Mr. Griffin: Yes, your Honor.

The Court: Objection overruled.

A. I have 67 percent interest in Apex Farms.

Q. (By Mr. Griffin): Yes, but this enterprise——

Mr. Griffin: I am trying not to lead.

Q. (By Mr. Griffin continuing): ——which one of the—was—which one of your enterprises would it meld into?

A. It melded into the enterprises I sold out to the Consolidated Dairy Products.

Mr. Moriarty: I don't think that is responsive.

Mr. Griffin: I know. It didn't help me any.

(Whereupon, there was a brief pause.)

The Court: We might take a recess at this time.

Mr. Griffin: I can go ahead all right.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions, and asks you to heed it on this occasion.

(Whereupon, the Jury retired from the Courtroom.)

(Testimony of Hans Forster.)

(Whereupon, at 2:45 o'clock p.m. a recess was had until 3:01 p.m. April 2, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:) [3171]

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the Courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Mr. Griffin: Will you mark this for identification, please?

The Clerk: Defendants' Exhibit A-64 marked for identification.

(Defendants' Exhibit A-64 marked for identification.)

Mr. Griffin: I will ask the stipulation that this is a copy of Mr. Taylor's, of December 31, 1932——

Mr. Moriarty (Interposing): 19 what?

Mr. Griffin: 1932.

Mr. LeSourd: We certainly can't stipulate to anything in regard to it, not having seen it before, and would object, not relevant to the case.

Mr. Moriarty: And certainly not proper redirect.

Mr. Le Sourd: And not proper redirect.

The Court: Do you wish to——

Mr. Griffin: (Interposing) Your Honor is at

(Testimony of Hans Forster.)

perfect liberty to see it. I am willing to state the purpose. I only asked for the stipulation because I am not sure that the witness can identify it, is all.

Q. (By Mr. Griffin): Mr. Forster, I hand you Exhibit A-64, for identification. I will ask you if you know what that is? Will you take a look at it, please?

A. Yes, it is the year-end statement of December 31, 1932, of Issaquah Creamery Company, prepared by Mr. Taylor.

Q. And will you look at the pencil notations—I show you that page—pen or ink, notations on that page, that page—by "that," they are unnumbered, —I am just showing pages—in whose handwriting —and that one—in whose handwriting are those?

A. All in Hicks Taylor's handwriting, the figures.

Mr. Le Sourd: Now, if your Honor please, I do not know what the purpose of this is. If there is going to be some offer of proof in connection with it, not knowing the purpose, I would like to suggest that the Jury be excused in connection with it, unless it is [3173] simply a matter of letting us look at it and seeing what it is.

Mr. Griffin: I am now offering A-64. As I stated before, I am perfectly willing to state my reasons, specifically what it meets in cross-examination.

Mr. Le Sourd: We will object to it on the ground it is not proper cross-examination, and irrelevant and immaterial to any issue in the case.

(Testimony of Hans Forster.)

Mr. Moriarty: The Government joins in the objection, and not proper redirect.

Mr. Le Sourd: If there is going to be some discussion about 1932, we suggest the Jury be excused.

Mr. Griffin: If the Court please——

The Court: (Interposing) The Court has no idea of the purpose, and would ask the purpose of it. Is there any objection to asking a statement of the purpose?

Mr. Le Sourd: No objection at all, unless there will be such an argument, as to, in effect, introduce the document by argument, your Honor.

The Court: Well, I will ask counsel for a statement.

Mr. Griffin: One purpose of it is that on cross-examination, Mr. LeSourd went back and examined on [3174] the early years from the beginning of the Issaquah Creamery Company.

In his opening statement, he stated that in those earlier years, Mr. Taylor made complete reports.

Mr. Le Sourd: In my——

Mr. Griffin: (Interposing) In your opening statement, sir, on the early years.

The purpose of this is to show that Mr. Taylor made this report in 1932 and stated it was an audit, that he had compiled the books, and to meet both cross-examinations, it shows that Mr. Taylor carried Mr. Forster in these records with a deficiency, to-wit: a substantial drawing account to which items could be charged. This is Mr. Taylor's audit

(Testimony of Hans Forster.)

of December 31, 1932, of the Issaquah Creamery Company.

Mr. Moriarty: Objected to as immaterial, remote, and not proper redirect.

Mr. Le Sourd: Same objection, your Honor.

If Counsel wishes to show that there was a drawing account for Mr. Forster, there are exhibits in this case showing it, and there is no reason to go to 1932, and it is not proper cross, and irrelevant.

The Court: The Court is inclined to sustain the objection, [3175] Mr. Griffin. If you wish to be heard on it, the Court will hear from you later.

Mr. Griffin: We are right at that point, because I certainly—I don't want to make a statement in front of the Jury, unless your Honor asks me.

The Court: Well, we will excuse the Jury now, if you think it is advisable.

Mr. Griffin: We can state it very briefly, and I think not improperly.

As I have suggested, Mr. LeSourd examined as to the relationship of Taylor and the witness from the time that he started his little cheese factory. His position has been, and throughout, that Mr. Taylor never prepared an audit, and was never an auditor of Issaquah Creamery Company.

Now, having gone—then they both had extensive examination as to why items weren't charged; why Mr. Erickson charged them to certain accounts. The witness has answered Taylor advised him he had a drawing account, and he thought they would be charged to those accounts. This document estab-

(Testimony of Hans Forster.)

lishes then the three things: Taylor made an audit, and was the auditor; he had a drawing account set up in these books, and the witness was absolutely correct in his testimony; [3176] it meets the cross-examination, particularly of Mr. LeSourd, as of the very beginning of this enterprise, and it meets the Government's cross-examination as to why he didn't know where matters were being charged, and why he had a right to assume that they were charged as Taylor had set it up in detail.

Mr. Moriarty: It proves nothing, if your Honor please, except——

The Court: (Interposing) Just a moment. At this time, the Court will adhere to its ruling. It seems to me too remote to meet that purpose, it being 1932, as I understand.

Mr. Griffin: I intend to show it throughout, if the Court please, with 1935, 1939——

Mr. Cox: (Interposing) 1945 and 1949.

Mr. Moriarty: This Indictment dates between the years 1945 and 1949.

The Court: I think probably it has come a little late. We can make an offer of proof now, if you wish to excuse the Jury, or at the conclusion.

Mr. Griffin: I do not wish to excuse the Jury at this hour.

The Court: All right.

Mr. Griffin: I want to go further than an offer of proof in this matter. I want to be heard on it.

The Court: Yes. All right. As I understand, that is only a part of other——

(Testimony of Hans Forster.)

Mr. Griffin: (Interposing) That is the full exhibit, itself, for that particular year.

The Court: Yes. You propose to offer that as a further exhibit and connect it up with the other——

Mr. Griffin: (Interposing) Other years.

The Court: Other years?

Mr. Griffin: Yes, your Honor.

The Court: It may be admissible, and the Court will hear from you on it, but would want to hear from you and get an offer also before we go ahead; so, the Court, not indicating it will not change its present ruling if it thinks otherwise——

Mr. Griffin: (Interposing) I understand.

Q. (By Mr. Griffin): In answer to a question of Mr. Moriarty, confined to the Indictment years, you said that you never dreamed that you were receiving any fund from Issaquah Creamery Company when the barn bills were paid by Issaquah. Do you recall that answer, in substance?

A. That is right.

Q. What—will you explain that answer?

A. As far as I was concerned, I think I explained [3178] to Mr. Moriarty, when I built the barn, it took us about seven or eight months to build it, and the material was bought through the carpenter, and the bills were sent to Issaquah Creamery, but it was not at any time that I felt that Issaquah Creamery Company was paying for it. I figured it was part of my expenses that went against my drawing account.

Q. Well, did you personally make any distinc-

(Testimony of Hans Forster.)

tion in your enterprises as between Issaquah Creamery and Alpine Dairy?

Mr. Moriarty: Just a moment. Objected to as not redirect, and repetitious.

Mr. Griffin: All right; I will withdraw the question as being repetitious.

Q. (By Mr. Griffin continuing): You stated in answer to a question that as far as you could recall, you had never even written a letter to Mr. Taylor; do you recall that?

A. Yes, I am quite positive of it.

Q. Do you have a secretary or a stenographer for yourself?

A. No, I never had a secretary or a stenographer.

Q. Who, generally, wrote letters when you had a [3179] letter to write, if you did?

A. Well, if I had any letters to write, I would talk it over with Mr. Erickson and he would write it out in longhand and let me read it over before he typed it.

Q. Do you recall that Mr. Moriarty asked you why you had hired Touche, Niven, and the accountants? A. Yes.

Q. And do you recall your answer was interrupted and you never got a chance to answer it?

A. Well, after Mr.—after Mr. Marx called me and told me that he wanted to go over our books of the different enterprises, and when I told him that Hicks Taylor had all the books and handled all the books, his answer was that Hicks Taylor

(Testimony of Hans Forster.)

was being sentenced in Tacoma a couple of days from then, and I talked to Mr. Taylor about it, and he told me to tell them—to tell the Internal Revenue Agent to go to hell.

Mr. Moriarty: I think this is repetitious. I think this is the third time we have heard that epithet.

Mr. Griffin: The what?

The Court: I think a number of times.

Mr. Moriarty: This, particularly, because I recognize some of the language. [3180]

(Whereupon, Counsel laughed.)

The Court: We will proceed, Gentlemen.

Mr. Moriarty: My objection is, it is repetitious.

Q. (By Mr. Griffin): Let's pass the epithet.

A. All right; then I called Mr. Kachlein and he said he was going to go to Tacoma with Mr. Taylor and he would talk to Mr. Taylor about it—who we should get as the accountants for the company in Hicks Taylor's absence, and not only while the business was being operated.

And when he came back, he said he talked to Mr. Taylor and they decided between themselves I ought to go ahead and make contact with Mr. Tremper's office, and secure their services, and that is when we hired the accountants.

Q. Did you personally contact Mr. Tremper's firm? A. Yes.

Mr. Moriarty: Objected to as not proper redirect.

(Testimony of Hans Forster.)

The Court: This is meeting Mr. LeSourd's examination; is that correct?

Mr. Griffin: Both Mr. LeSourd's examination and [3181] Mr. Moriarty's.

The interruption was in Mr. Moriarty's question. He never let him complete the answer.

Mr. Moriarty: I didn't intend to.

The Court: Objection overruled. Do you have the question in mind?

The Witness: Yes.

A. I went to Mr. Tremper's office and we secured their services to start in checking over the books and checking over the records and keeping the books for the Hans Forster enterprises—of all my different companies.

Q. (By Mr. Griffin): As of that time, were you aware of any discrepancy in the books of any kind?

A. No, I wasn't.

Q. When—I think you have testified that Mr. Hall was at the Issaquah Bank; is that right?

A. Well, yes, and he was president of the——

Mr. Moriarty: (Interposing) Just a moment. I think it is answered.

A. (Continuing) Yes.

Q. (By Mr. Griffin): All right; and Donaldson and Strack of the Peoples Bank in Seattle? [3182]

A. That is right, yes.

Q. Now, when you conferred with them about loans, did you consider any of them your financial advisers?

(Testimony of Hans Forster.)

Mr. Moriarty: Objected to as not proper redirect, and calling for a conclusion of the witness.

The Court: Objection overruled.

A. No, I didn't consider them financial advisers. That was the place I went to borrow the money, and that is the people I had to see. They were in charge of the loan department.

Q. (By Mr. Griffin): Who did you consider your financial adviser all those years?

Mr. Moriarty: Objected to as repetitious. Not proper redirect. It has been gone over.

The Court: It was covered by the answers.

Mr. Griffin: Extensive cross-examination was had upon financial adviser. I just want the one question, is all.

Mr. Moriarty: I think——

The Court: (Interposing) We will overrule the objection for that one question.

Q. (By Mr. Griffin continuing): Who did you consider your [3183] financial adviser all these years? A. Hicks Taylor.

Q. Had you ever conferred with Mr. George Kachlein about any matter prior to the latter part of March, 1950?

A. I never met Mr. Kachlein until the latter part of March, 1950.

Q. Now, you were interrogated as to whether you talked with Mr. Erickson about milk prices, labor, and such things, and Miss Neukirchen about slow accounts; do you recall that? A. Yes.

Q. Did you discuss, from time to time, your

(Testimony of Hans Forster.)

business affairs with Erickson, Neukirchen, or other employes? You can answer "yes" or "no."

A. No.

Q. Did you ever at any time discuss with any one of your employes the manner in which the books were handled? A. No.

Mr. Moriarty: I certainly think this is not proper redirect. As I recall, we had two days of this.

Q. (By Mr. Griffin): Did——

Mr. Moriarty: (Interposing) I would like your Honor [3184] to rule on my objection.

The Court: There is no question pending. On the next question?

Mr. Moriarty: May my objection be noted at this time?

Mr. Griffin: To the next question?

Mr. Moriarty: Yes; it will be in order, if your Honor please.

Q. (By Mr. Griffin): Mr. Moriarty asked you if you had made any effort to find how much tax was due. Do you recall that question, in substance?

Mr. Moriarty: Yes, sir.

Mr. Griffin: I am asking the witness.

A. We made a very definite effort. In fact, we went as far as going to Washington, Mr. Kachlein and I, for two days.

Q. (By Mr. Griffin): Washington, D.C.?

A. Washington, D.C.; and all we got is just a run-around in different departments. I don't know where we went, but that is all we actually got, and

(Testimony of Hans Forster.)

we was very, very disappointed when we finally didn't get any place. They didn't give us any answer what to do, and how to do it, and when to do it. [3185]

Mr. Moriarty: I think he should fix the time for this.

Mr. Keesling: If the Court please, I didn't hear the first part of the answer. They were all talking.

The Court: I think much of the answer exceeded the question.

Mr. Griffin: Correct.

Q. (By Mr. Griffin): Will you fix what time it was, approximately, that you and Mr. Kachlein made this trip to Washington, D.C.?

A. It was during—I would say—either late fifties, or early '51s. I can't just exactly give you the date. I am sure we could look it up.

Q. And since that time, have you been trying to find out what your tax is? A. We sure have.

Mr. Griffin: That is all; except for the——

The Court: (Interposing) One matter?

Mr. Griffin: The matter in reserve.

Mr. Keesling: If the Court please, I didn't hear the first part of his answer.

The Court: Do you want the whole answer?

Mr. Keesling: Just the answer. [3186]

The Court: Mr. Reporter, read the answer.

(Whereupon, the following was read by the reporter:)

"Answer: It was during—I would say either late

(Testimony of Hans Forster.)

fifties, or early '51s. I can't just exactly give you the date. I am sure we could look it up.

"Question: And since that time, have you been trying to find out what your tax is?

"Answer: We sure have."

The Court: Have you any recross?

Mr. Moriarty: I think I might ask the witness the question:

Recross Examination

Q. (By Mr. Moriarty): If you thought your books were in good shape at the time Mr. Marx talked to you on the first occasion, why didn't you turn the books over to Mr. Marx at that time?

A. Mr. Marx never asked me. In fact, I think he told me to get an accountant, and after he told me he was the one that took—got Mr. Taylor to plead guilty in Tacoma.

Q. So, you went right down on Mr. Marx's statement and hired Mr. Tremper?

A. You told me you didn't want me to repeat it again. [3187]

I can tell you I talked to Mr. Taylor, and he told me. I explained it three times, and this would be the fourth time.

Q. All right.

A. I talked to Mr. Taylor first, and after he made that statement——

The Court: (Interposing) Is there a question now?

Mr. Moriarty: I don't know. I do not mean to

(Testimony of Hans Forster.)

be disrespectful, but I had asked the question, and the witness started to answer.

Q. (By Mr. Moriarty): During the year, you spent fourteen thousand dollars on the barn, didn't you also draw your eighteen thousand dollar salary from Issaquah Creamery Company?

A. I would think so, yes; sure.

Mr. Moriarty: That is all.

Recross Examination

Q. (By Mr. LeSourd): Mr. Forster, Mr. Griffin showed you a number of checks from various—from corporations that you put into 198, and asked if it didn't occur to you to tell Taylor about these and you said it did not occur to you to tell him about them? [3188]

A. Well, I didn't say it didn't occur to me. I said he definitely should have known about them between being accountant and secretary-treasurer for all of the different companies, and a lot of those checks, in the first place, he would talk to me about it, or I talk to him about it.

Q. Mr. Forster, Mr. Griffin asked you question after question using the words, "Did it occur to you?" I even objected to it. Now, is it your testimony that it did not occur to you?

A. No, I answered his questions.

Q. And your testimony was that with all these various checks that he showed you from various of your companies which you put in 198, it did not

(Testimony of Hans Forster.)

occur to you to tell Mr. Taylor that you put them in 198?

A. Well, in answer to your question, there was actually two different ways that Taylor knew about it. In the first place, being accountant; and, the second, because we talked about it.

The Court: Just a minute, Mr. Forster.

Mr. Le Sourd: Mr. Forster, please answer my question.

The Court: Do you want the question read?

Mr. Le Sourd: Please, sir. [3189]

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Griffin: I object to the form of that question, if the Court please. I used certain checks and exhibits only in interrogating the witness.

Mr. Le Sourd: I am talking about the checks and exhibits that Mr. Griffin used.

Mr. Griffin: All right.

Q. (By Mr. LeSourd): Your testimony was that it did not occur to you to tell Mr. Taylor that you had put these checks in 198; wasn't that your testimony?

A. I figured I didn't have to.

Q. Yes; now, was that true of the other checks that came from these various enterprises of yours to Issaquah Creamery Company or Alpine Dairy that you put in 198?

Mr. Griffin: Objected to as not recross examination.

(Testimony of Hans Forster.)

Mr. Le Sourd: It is all tied in with the same thing, your Honor.

The Court: It looks to me, Gentlemen, we are dragging this out more than necessary. I don't wish to limit cross-examination, particularly on a defendant, but [3190] are we not——

Mr. Le Sourd: (Interposing) I don't think so, your Honor. The witness says it didn't occur to him to tell Mr. Taylor, and I am wondering if that is these particular checks, or whether that is true of other checks that he received.

The Court: As I recall, those questions on redirect were opened up, in part, by some of your examination.

Mr. Le Sourd: Yes.

The Court: And particularly by the broad question of Mr. Moriarty that these deposits were made by Mr. Forster in 198 and it didn't occur to him to tell or advise Mr. Taylor about it.

Mr. Le Sourd: Yes; I didn't object to Mr. Griffin asking about this, and I thought it was proper redirect examination, and I think proper recross to clear the matter up.

The Court: You may, if you wish to, frame one question.

Mr. Le Sourd: Well, I have one or two questions on this, your Honor.

The Court: Well, we will see where it goes. You may proceed.

Mr. Le Sourd: Well, I have more than that on

(Testimony of Hans Forster.)

the [3191] specific matters that Mr. Griffin went into.

The Court: I understand. If you will reframe the question, or do you wish to have it read?

Mr. Le Sourd: I think I can reframe it, your Honor.

Q. (By Mr. LeSourd): Was this true that it didn't occur to you to tell Mr. Taylor about putting the checks in 198 only as to the specific checks Mr. Griffin showed you, or was it true, also, as to the other checks coming from your various business enterprises into Issaquah or Alpine that you put in your savings account?

A. I can't answer "yes" or "no." You go ahead and take the whole, of course. I told you before Mr. Taylor knew all about what went into 198. I can't say "yes" or "no," if you bunch it together.

Q. Then your answer is, I take it, that you don't know; is that your answer?

Mr. Griffin: I object to the form of that question.

My objection goes to this, if the Court please: I examined on specific checks. Testimony was not as to the discount checks, and I didn't examine as to those, and I didn't endeavor to open. I was rebuttal. [3192]

The Court: The answer, I think, speaks for itself.

Mr. Le Sourd: Well, I don't think I got any answer to my question, your Honor, but if your Honor wishes me to go on——

(Testimony of Hans Forster.)

The Court: (Interposing) I will ask that the question be read, and the answer read and see if your following question is pertinent.

(Whereupon, the following was read by the reporter:)

"Question: Was this true that it didn't occur to you to tell Mr. Taylor about putting the checks in 198 only as to the specific checks Mr. Griffin showed you, or was it true, also, as to the other checks coming from your various business enterprises into Issaquah or Alpine that you put in your savings account?

"Answer: I can't answer 'yes' or 'no.' You go ahead and take the whole, of course. I told you before Mr. Taylor knew all about what went into 198. I can't say 'yes' or 'no,' if you bunch it together.

"Question: Then your answer is, I take it, that you don't know; is that your answer?" [3193]

The Court: I don't know that that is a proper question.

Mr. LeSourd: Very well.

The Witness: I gave him the answer.

Mr. LeSourd: I will withdraw it.

Q. (By Mr. LeSourd): Now, if it didn't occur to you, Mr. Forster, to tell Mr. Taylor that these particular specific checks were being put in 198, then you didn't tell him, did you?

A. I did tell him. I just got through testifying he knew all about it, what happened to 198. A lot of the checks we had definite discussion about it.

(Testimony of Hans Forster.)

Q. How did you happen to tell him, without it having occurred to you to tell him?

A. Well, we just——

(Whereupon, there was a brief pause.)

Q. There is no answer to that?

(Whereupon, there was a brief pause.)

A. Well, I just got through telling you that Taylor knew about every item that went into 198. I can't go ahead and make it any more specific. I don't know why you are trying to tear it apart and set it up a different way. I can't tell you. I [3194] made that statement, and it is true, and I know it. What should I say?

Q. Now, when I was inquiring of you about the 1949 year-end adjustments, you said that what Mr. Taylor was talking about was the monthly profit for December. Mr. Griffin inquired whether you were talking about annual figures for the year 1949.

Now, will you please clear up for me whether in that discussion about the year 1949 with Mr. Taylor, were you talking about December figures or yearly figures?

Mr. Griffin: Just a moment. Objected to as not redirect; covered by counsel time after time.

The Court: I will overrule the objection. Do you have the question in mind, Mr. Forster?

The Witness: Yes.

A. Well, we had the November statement in front of us. We had the total, and it showed a loss of nine thousand dollars; and then he come in with

(Testimony of Hans Forster.)

the rough figure of between twenty and twenty-five thousand dollars, which should make up a rough figure of the yearly set-up. He didn't give me a statement for December. He just come in with some figures he had in his work sheet, and we went over it, and that is the time we talked about sales, and that is the time I told [3195] him he better try to take a look at the figures again and see if there wasn't something wrong about it, because it was 'way out of line, compared to the sales before.

Q. (By Mr. LeSourd): So that you were talking about the yearly figures?

Mr. Griffin: I submit he testified what they talked about.

Mr. LeSourd: Very well, your Honor, I will proceed from that.

Q. (By Mr. LeSourd continuing): Now, I believe, when I was examining you, you said that this yearly—this annual—profit for 1949 was $127,000—something like that?

A. I said between—between $115,000 and $120,000. I really don't know. It was over one hundred thousand dollars. If you got the figure there, I don't know.

Q. What is your testimony? It was around one hundred and fifteen, or one hundred and twenty?

A. I said over one hundred thousand dollars.

Mr. Griffin: Not proper redirect, your Honor.

The Court: Just a moment. There was a [3196] preliminary question, and the witness reviewed in response, so——

(Testimony of Hans Forster.)

Mr. LeSourd: That is right, your Honor.

The Court: (Continuing) So, I assume you have to clear that issue.

Mr. LeSourd: My recollection is he said one hundred twenty-seven thousand to me and one hundred ten or one hundred fifteen thousand to Mr. Griffin.

Q. (By Mr. LeSourd): And, I want to find out what figure it was that was shown to you by Mr. Taylor at the end of this year?

A. I told you before it was over one hundred thousand dollars. He showed twenty-five thousand dollars profit in December, so it must have been one hundred thousand before. I can't tell you. I know it was out of line, because it showed three times as much as the year before, with the figures he had, and with approximately the same amount of sales. That is all I can remember. I haven't taken a look at the statement, since that time.

Q. Was the figure over one hundred twenty thousand that he showed you?

A. I know it was over one hundred thousand.

Q. Was it over one hundred twenty thousand?

Mr. Griffin: I object as not re-redirect.

The Court: Objection sustained.

Mr. LeSourd: May we have 259 and 259-A?

(Whereupon, exhibits were handed to Mr. LeSourd by the clerk.)

Q. (By Mr. LeSourd): At the time that you went over these figures, you had the November fig-

(Testimony of Hans Forster.)

ure before you, I think you said, in Mr. Taylor's worksheet?

A. I didn't have it in front of me. He had it in front of him.

Q. But you had it in the discussion?

A. That is right, yes.

Q. Now, handing you Plaintiff's Exhibit 259-A, this is Mr. Taylor's worksheet for November 30, 1949, for Issaquah Creamery Company. Would you give us the amount of the net profit for the year to date, up to that time?

A. $121,000, $133.54 ($121,133.54.)

Q. So that, if Mr. Taylor told you the profit for December was twenty or twenty-five thousand dollars, what would that have made the figure he gave you?

Mr. Griffin: Objected to as argumentative [3198] and not redirect, upon anything, if the Court please.

The Court: Objection overruled. This issue has been gone into on each examination back and forth, and I assume that it will take days, so that—go ahead.

Mr. LeSourd: Just trying to clear up the ambiguity.

The Court: The question is, if it doesn't become more confusing; so, go ahead.

The Witness: It does to me, your Honor.

Q. (By Mr. LeSourd): You got the net profit of $121,133.54 at the end of November; now, if you added the December profit of twenty or twenty-five thousand, what would you have?

(Testimony of Hans Forster.)

A. That would be 145 or 146 thousand.

Q. Mr. Taylor never gave you any such figure, did he? A. Which figure?

Q. For the year?

A. He never furnished us with that figure, if that is what you mean.

Q. I am talking about the figure for 1949 that you took exception to.

A. It was over $100,000, I told you. He told me [3199] there was twenty-five thousand dollars' profit in the month of December.

Q. You said that Taylor kept the books at Apex Farms?

A. I said he supervised the books at Apex Farms.

Q. What did Mr. Keck do up there?

Mr. Griffin: Objected to as not redirect.

Mr. LeSourd: Going on with the direct questions.

The Court: Objection overruled.

A. Mr. Keck was under his supervision, and office manager, like Mr. Erickson was.

Q. (By Mr. LeSourd): The checks written from Apex Farms, and Finstad and Utgard and Arctic Gardens were perfectly legitimate checks to pay legitimate expenses; weren't they?

A. As far as I was concerned, there wasn't—in any one of the transactions was anything legitimate.

Q. And the difficulty was that—excuse me, the difficulty with it, so far as this case is concerned,

(Testimony of Hans Forster.)

that when the checks got to Issaquah they were put into 198 instead of Issaquah Creamery Company or Alpine Dairy account; isn't that right? [3200]

A. It looks to me like the difficulty was that Mr. Taylor didn't report them.

Q. Your problem was that when they got to Issaquah they went into 198; isn't that right?

A. That wasn't the problem. As far as 198 was concerned, I figured everybody knew about it.

Q. But there was no problem involved in the writing of those checks by Arctic Gardens or Apex Farms, was there?

A. What do you mean? Hicks Taylor wrote Arctic Gardens checks and in most instances, brought them out and gave them to me.

Q. A perfectly valid good check for a legitimate business expense? A. That is right.

Q. Now, you testified that Mr. Erickson wrote your letters; is that right?

A. Well, whatever letters I wrote, Mr. Erickson wrote.

Q. Do you still say he didn't work under your supervision?

A. Well, he was an employee, just like any employee was in all the rest of the plants.

Q. And you say that you did not confer with Mr. Kachlein about any matters before the latter part of [3201] March, 1950?

A. That is right, yes.

Q. Did you hear Mr. Egeness's testimony here?

A. Yes.

(Testimony of Hans Forster.)

Q. Do you recall his testifying that Mr. Kachlein was involved in the February 28th payments to Mrs. Finstad?

Mr. Griffin: Just a moment. I object to that question—assuming something not in evidence, if you are basing it upon the date of February 28th.

The Court: Do you have a transcript, Mr. LeSourd?

Mr. LeSourd: Pardon?

The Court: Do you have a transcript?

Mr. LeSourd: Yes, I have.

Mr. Griffin: Interested in those final payments and doing anything prior to March, 1950?

Mr. LeSourd: I have the transcript, your Honor.

Q. (By Mr. LeSourd): Do you recall the testimony, Mr. Forster, of Mr. Egeness?

Mr. Moriarty: What page?

Mr. LeSourd: Page 92. [3202]

Q. (By Mr. LeSourd continuing): "Question: Do you know whether or not these final payments to Mrs. Finstad were made——"

Q. (By Mr. Griffin): "Do you know whether or not these final payments to Mrs. Finstad were made after accountants or attorneys other than Mr. Taylor began an investigation of the affairs of Finstad and Utgard?"

And the answer:

"Yes, I believe it was after—I believe it was after Mr. Kachlein came into the picture. I am not positive on that, though."

Do you recall that testimony?

(Testimony of Hans Forster.)

A. No, I don't recall it, but I still think that is the first time I met Mr. Kachlein, the latter part of March, and that is the time we talked to him about taking over the escrow agreement of Mr. Croson's.

Q. You were asked by Mr. Griffin as to the checks to Mrs. Finstad, whether or not it occurred to you to tell Mr. Taylor about them, and you said "No."

Do you mean by that that you knew about those checks?

A. I knew Mrs. Finstad was being paid out of Finstad and Utgard for the contract.

Q. And you knew she was being paid through Mr. Egeness's salary, also? [3203]

A. Of course not. I don't know how we handled it in the books. I knew we bought—I had to pay off the contract, and I knew we didn't pay it; it came out of the company, just like the last two checks. How Mr. Taylor handled it on the books, Mr. LeSourd, I can't tell you.

Mr. LeSourd: That is all.

Mr. Keesling: I have no questions.

Mr. Griffin: That is all, Mr. Forster.

The Witness: I don't believe it.

(Whereupon, there was laughter.) [3204]

* * * * *

PHILIP A. STRACK

upon being called as a witness for and on behalf of the Defendant Forster, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling of your name, please.

The Witness: Philip A. Strack, P-h-i-l-i-p A. S-t-r-a-c-k (spelling).

Q. (By Mr. Brody): Will you please state your full name for the record, Mr. Strack?

A. Philip A. Strack.

Q. Where do you reside, Mr. Strack?

A. At the present time, in Bellevue.

Q. And what is your occupation?

A. I am associated with the Peoples National Bank.

Q. What is your present position at the Peoples National Bank?

A. Chairman of the Executive Committee.

Q. And how long have you been with the Peoples Bank? A. Since May of 1930.

Q. And what positions have you held at the Bank [3226] since you came to the Bank in May, 1930?

A. Assistant Vice-President, Vice-President, Executive Vice-President, President, and Chairman of the Executive Committee, and a Director.

Q. And——

A. (Continuing) And a member of the Board of Directors.

(Testimony of Philip A. Strack.)

Q. Are you acquainted with Mr. Hans Forster, one of the Defendants in this case?

A. Yes, I am.

Q. And can you state what your first contact with Mr. Forster was?

A. Well, approximately 1931 or 1932, I met him as a result of the fact that our bank had acquired, by foreclosure, a stock certificate which represented one-half of the stock of the Issaquah Creamery Company, or approximately one-half of the stock of the Issaquah Creamery Company.

Q. And can you say how that resulted in your contact with Mr. Forster?

A. He was the manager of the Issaquah Creamery Company, and I asked one of my associates to go out and visit with him, and advise him we held the balance of the stock. We understood he was the owner of the remainder of the stock, and as a result of that, he came [3227] in the bank within the next few days, and I met him and talked with him about the affairs of the company.

Q. Was Mr. Forster thereafter a customer of your bank?

A. Yes, I believe continuously since, through his enterprises or personally.

Q. And are you acquainted with L. Hicks Taylor, another one of the defendants here?

A. Yes, I am.

Q. And did you meet Taylor in connection with Mr. Forster's enterprises?

A. I believe I met Mr. Taylor before I came

(Testimony of Philip A. Strack.)

in contact with him, as a result of his being associated with Forster.

Q. And did you have any business dealings with Mr. Taylor prior to your knowing Mr. Forster?

A. No definite business dealings. He was also a customer of our bank, and I knew him in that respect.

Q. And did you know Mr. Harold Erickson, who is a third defendant in this case?

A. No, I do not.

Q. Now, can you state, following your first acquaintance with Mr. Forster, what your relationship to him was? [3228]

A. Well, that of his banker; listening to his requests for financing, which he did request from time to time, and having various negotiations with him along that line.

Q. Did Mr. Taylor ever participate in the negotiations which you had with Mr. Forster?

A. Oh, yes; on many occasions.

Q. And will you state what his participation was?

A. Well, he replied to our questions concerning the financial statements and the finances of the business, the financial statements which were furnished to us to support the credit applications.

Q. Did he, from time to time, accompany Mr. Forster to the bank?

A. Yes, on many occasions.

Q. Now, in your dealings with Mr. Forster, whom did you represent?

(Testimony of Philip A. Strack.)

A. The Peoples National Bank.

Q. And whose interests were you looking after in your dealings with Mr. Forster?

A. Those of the bank.

Q. And if a loan were favorable to Mr. Forster, and unfavorable to the bank, what would your reaction on the loan be? [3229]

A. I think we would have had to decline it.

Q. In other words, will you state whether you were intending to act as a personal financial adviser to Mr. Forster?

A. No, I had one function, and that was to represent the bank. Originally, to recover, if we could, the amount that was represented by this original half interest, or approximate half interest, in this Issaquah Creamery Company, and then later to finance, as best we could, the operations of Hans Forster.

Q. Now, did you receive periodic financial statements of Mr. Forster's enterprises, and Mr. Forster, personally?

A. Annually, all those we were financing, at least, and, on occasions, interim statements at other dates than those of the closing of their year end.

Q. Do you know who made up those statements which were submitted to you?

A. Well, we——

Mr. Moriarty: (Interposing) Answer that "yes" or "no".

Q. (By Mr. Brody): Do you know who made them up?

(Testimony of Philip A. Strack.)

A. Do I know who made them up? [3230]

Mr. Moriarty: That is the question.

A. (Continuing) No, I can't say I know who made them up.

Q. (By Mr. Brody): Now, if you had any question concerning those statements, to whom would you apply for information? A. Mr. Taylor.

Q. And have you ever asked Mr. Forster for any type of explanation of questions arising from his statements?

A. From time to time, especially in the early years, but without any result.

Q. And if you obtained no result from him, what would you then do?

A. We would ask Mr. Taylor.

Q. And the statements that were submitted to you, did you rely on them as Mr. Taylor's work?

A. Yes, we considered them as Mr. Taylor's work and our decisions on credit were based on those figures.

Q. Now, in the years 1945 through 1949, can you recall any specific transactions in which you dealt with Mr. Hans Forster on his enterprises?

A. Any specific transactions?

Q. That is right. [3231]

A. Well, the only ones I can recall are a series of discussions which we had concerning the construction of the ice cream plant.

Q. And can you state briefly what the subject-matter of those discussions was?

A. Well, Mr. Forster was desirous of building

(Testimony of Philip A. Strack.)

a new plant for the Alpine Ice Cream Company, and we had several discussions with reference to the money he needed to pay for the cost of the construction and for the equipment.

There were several propositions discussed before we finally came to a definite deal.

Q. In what manner was it—did the bank ultimately participate in financing of that construction?

A. We made a loan to Alpine Ice Cream Company.

Q. And was that a secured or unsecured loan?

A. Unsecured loan.

Q. And can you state on what basis you made an unsecured loan to the Alpine Ice Cream Company for that construction?

A. With the endorsement of Hans Forster personally.

Q. And did you make any inquiry as to Hans Forster's personal assets? [3232]

A. Yes, we did.

Q. Prior to accepting his personal endorsement and guarantee?

A. Yes, I did. In one of the original discussions, his personal financial affairs were explained to us in some detail.

Q. Now, can you recall who was present at that discussion when his personal financial affairs were explained?

A. I can't pin it down to one discussion. I think there were several, but the—in one or two discus-

(Testimony of Philip A. Strack.)

sions, I will say Mr. Forster and Mr. Taylor were present.

Q. Now, can you recall being present at such a discussion on February 12, 1948?

A. I couldn't specify the date, without referring to our credit files.

Q. Now, I will show you, in order to refresh your recollection, if it will, Defendants' Exhibit A-1, which are sheets from your credit file, and Alpine Ice Cream Company. Does that serve to refresh your recollection as to the events of February 12th?

A. Well, my recollection is that we had a discussion earlier in 1948 concerning this matter, and this would indicate that they were held on, or just [3233] prior to, February 12, 1948.

Q. And who was present at those discussions?

A. Mr. Taylor and Mr. Forster.

Q. And can you state what assets of Mr. Forster were mentioned in this review of his personal financial situation?

A. Well, there was specifically mentioned that he had a substantial savings account, and also a holding of Government bonds.

Q. And were the extent of that—now, where was that savings account, mainly in the bank at Issaquah?

A. No, partially in the bank at Issaquah, and partially with us.

Q. And was the extent of the account in Issaquah mentioned or revealed?

(Testimony of Philip A. Strack.)

A. My recollection is that there was about two hundred thousand dollars in savings funds involved.

Mr. Brody: You may inquire.

Cross Examination

Q. (By Mr. Patten): Mr. Strack, you referred to various financial statements which Mr. Forster filed with your bank. You stated that you relied upon those financial statements, in making loans; is that correct, sir? [3234]

A. That is right.

Q. Whose signature appeared on those financial statements?

A. I would say largely Hans Forster's signature.

Q. Yes, sir; in reference to this conference around February 12th, 1948, at which was discussed the financing of the Alpine Ice Cream Company, I understand that the bank required certain additional information concerning Mr. Forster's personal assets as distinguished from his business assets; is that correct?

A. Well, we had his personal financial statement at that moment, and it was explained where the cash was held, how it was held.

Q. I understood from your testimony that there was some discussion as to the nature and extent of these assets; is that correct, sir?

A. Yes.

(Testimony of Philip A. Strack.)

Q. Who supplied that information and the discussion, sir?

A. That would be difficult for me to state at this time.

Q. Did Mr. Forster or Mr. Taylor supply that information? [3235]

A. I wouldn't attempt to say. I just don't recall. I know in the discussions it was brought out, but whether it was mentioned by Mr. Forster or Mr. Taylor, I couldn't recall at this time.

Q. Now, in the discussion of the feasibility of merging the Arctic Gardens with the Alpine Ice Cream Company; or, rather, changing the corporate name, were these discussions of changing the corporate name of Arctic Gardens to Alpine Ice Cream Company and the bringing the business of the Ice Cream business into that corporation, was that the discussions to which you have reference?

A. Well, that was part of the discussion at, approximately that period of time, but whether that took place in the same discussions, I couldn't recall at this time.

Q. Were the advantages or disadvantages of this arrangement discussed?

A. At some time or another, in the discussions at approximately that time, I have recollection that the Arctic Gardens, the old corporate structure of Arctic Gardens was going to be used for Alpine Dairy, but that is the extent of my recollection of those discussions.

(Testimony of Philip A. Strack.)

Q. What was the advantage of that arrangement, [3236] sir?

A. I wouldn't have any way of knowing.

Q. Would reference to your notes refresh your memory on that?

(Whereupon, witness examined some papers.)

Q. (Continuing) I hand you Exhibit 135.

A. Yes?

Q. Isn't it a fact that tax advantages were one of the reasons for this arrangement, sir?

A. Well, they apparently were explained to me at that time, according to this memorandum which I wrote on April 6, 1950. No, which Mr. Donaldson wrote; not myself.

Q. Can you tell who explained the tax advantages of this arrangement, sir?

A. No, I cannot.

Mr. Patten: Thank you very much.

Mr. LeSourd: Is that all?

Mr. Patten: Yes.

Cross Examination

Q. (By Mr. LeSourd): Mr. Strack, as a banker representative of the bank, were you interested in the financial success of the customers to whom you had loaned money?

A. Yes; that is always a consideration. [3237] The primary one, of course, being the protection of the bank's interest.

Q. The bank is better protected if the customer is successful; isn't it? A. That is true.

(Testimony of Philip A. Strack.)

Q. And from time to time, did you not discuss with Mr. Forster the financial problems in his various enterprises? A. Yes, we did.

Q. From time to time, did you not discuss with Mr. Forster the matter of acquisition of the various new businesses?

A. After they were acquired.

Q. You don't recall any discussion before businesses were acquired?

A. Probably so, but in most cases, we got into the discussion after the deal had been made.

Q. But there were some, were there, where Mr. Forster talked to you before he went about acquiring businesses?

A. Mr. LeSourd, I have no recollection of any definite——

Q. (Interposing) It has been quite some time, I know. Do you recall Apex Farms, as to whether the Bank recommended or suggested to Mr. Forster the [3238] acquisition of that enterprise?

A. No; I do have some recollection of that, now that you recall that name. Mr. Forster originally suggested it, and, because I knew both parties, I did enter into some preliminary negotiations at the point that a conclusion was expressed. I simply stepped out, and from there on, the deal was made without any outside assistance.

Q. Do you recall making recommendations to Mr. Forster, I think about 1940, concerning the building of a milk plant on Rainier Avenue, and hiring of architects, and other such things?

(Testimony of Philip A. Strack.)

A. Not specifically, Mr. LeSourd. That has been a long time ago.

Q. You would have to refer to your credit notes as to that, would you? Do you recall any other acquisitions, or building, or purchases, that Mr. Forster talked to you about?

A. I can't recall any specific instances.

Q. Well, as far as your recollection goes, it is possible that Mr. Forster discussed various of these acquisitions with you from time to time, during these years?

A. It is possible, but, as I mentioned before, it was usually after they had been acquired. [3239]

Q. You were asked, on direct examination, as to whether in these discussions on the Alpine Ice Cream plant, it was revealed, or stated, as to the amount in these savings accounts, and your answer simply said, I think, that it was your recollection that two hundred thousand dollars was involved.

Do you recollect independently at this time as to exactly what statements were made in that respect?

A. Exactly what statements were made?

Q. Yes.

A. No, I couldn't give an exact statement that was made at that time.

Q. Do you recollect that it was two hundred thousand dollars stated to be in the savings account? A. That is my recollection, yes.

Q. Do you have the May 24, 1947, notes there?

A. Of what company?

(Testimony of Philip A. Strack.)

Q. I think it is Issaquah Creamery Company.

A. No, I have not.

Q. Maybe Alpine Dairy; do you have the Alpine Dairy notes for that date?

A. Yes; May 24—what date?

Q. 1947. A. No. [3240]

Mr. Moriarty: What exhibit do you have?

Mr. LeSourd: 130, Mr. Moriarty.

Q. (By Mr. LeSourd): Now, I take it, Mr. Strack, that the only real recollection you have, independent of the figures discussed, is the figure $200,000 that sticks in your mind from those conversations? A. That is right.

Q. And you can't recall today who said what, and what figures were actually stated?

A. Not specifically the words that were said, and by whom, no.

Q. Referring you to notes in your credit memorandum, May 24, 1947, Plaintiff's Exhibit 130, which bears the initials "P.A.S."—I take it those are your initials? A. Yes.

Q. I ask you to notice the memorandum on the bottom of the first page, and state whether or not that refreshes your recollection as to whether the two hundred thousand dollar figure, you mentioned was savings account, or was to include other assets?

A. Bear in mind that the mention I made was in 1948. This is May, 1947.

Q. This is an entirely different conversation [3241] you are talking about?

A. Well, the conversations about which I testi-

(Testimony of Philip A. Strack.)

fied before were those which took place in early 1948, around February 12, as indicated by you and they concerned the desire of Mr. Forster to construct a new ice cream plant. This is, of course, May, 1947.

Q. Yes; and in May, 1947, do those notes refresh your recollection as to some amount that Mr. Forster had mentioned to you as being in savings account?

A. This indicated that he had mentioned that he had sixty thousand dollars in the savings account.

Q. Do you have any notes of these conversations in May, 1948?

Mr. Cox: February.

Q. (By Mr. LeSourd continuing): February, 1948; excuse me.

A. Only what are indicated in the credit file.

Q. Is there any direct indication in your credit file for that date that statements were made during the conversation as to exactly the amount in any particular accounts?

A. Bear in—may I mention that this comment was not made by me? [3242]

Q. I see.

A. If you want to ask me of my recollection.

Q. I am sorry. I hadn't realized that, Mr. Strack. Then I take it that your recollection is that there was some figure of two hundred thousand dollars involved; that you can't recollect exactly what was said, or by whom?

A. May I say that it was $200,000 of available

(Testimony of Philip A. Strack.)

funds? It could have been that that—part of that was Government bonds.

But, considering the amount of investment that Mr. Forster was contemplating making, and that we considered we might be willing to loan him, my recollection is it was about two hundred thousand dollars in available funds, and I might be confused as to whether they were all in savings account or whether that included Government bonds.

Mr. LeSourd: That is all.

Mr. Keesling: No questions.

The Court: Anything more, Mr. Brody?

Mr. Brody: Yes, your Honor, I will have a few more questions.

Redirect Examination

Q. (By Mr. Brody): Concerning the signatures about which Mr. [3243] Patten asked you, Mr. Strack, why did you require a signature on the statement that was submitted to you?

A. Well, the National Bank Examiner will not consider a statement as of any value in his examination unless it contains a signature, so we either obtain a signature of an accountant, or an officer of the corporation; usually an officer of the corporation.

Q. And if Mr. Forster's signature appeared on the statements, on whom did the Bank rely for the accuracy and reliability of the statements?

A. We relied on Mr. Taylor.

(Testimony of Philip A. Strack.)

Q. Well, did you, in fact, rely on Mr. Forster as the author of those statements?

A. No, we did not.

Mr. Brody: Your Honor, there has been discussion and cross-examination concerning certain entries in these credit files. I wonder if I might have permission to read to the Jury the entries from February 12, 1948, which is Defendants' Exhibit 1?

The Court: That is admitted, is it?

Mr. Brody: Yes.

The Court: In all respects?

Mr. Brody: Yes.

The Court: You may read it.

Mr. Brody: The entry for February 12, 1948, [3244] "P.A.S.,"—an abbreviation for Philip A. Strack—"has had several discussions with Hans Forster and his accountant, Hicks Taylor, over financing of a new ice cream plant on their present property on 4058 Rainier Avenue. It is anticipated that the plant and equipment will cost approximately $200,000 and while they originally asked for a maximum loan, they have now agreed that they can get by with a mortgage loan of $100,000. We have been supplied with financial statements as of December 31, 1947, from Issaquah Creamery Company, Incorporated, Alpine Dairy, Apex Farms, Incorporated, and Finstad and Utgard, Incorporated. Hans Forster has with the Washington State Bank, Issaquah, approximately $100,000 on deposit. He has better than $60,000 on deposit in our savings account. He owns free and clear fifty thousand dol-

(Testimony of Philip A. Strack.)

lars in U. S. Treasury Bonds, and has securities which have a market value of approximately $24,000. He will sell his securities and use some of his reserves to cover the difference between a $100,000 mortgage and the cost of the building. We have asked that he give us the name of the contractor, showing us his firm bid and other details concerning the final [3245] construction. The application was discussed at our Directors' Executive Committee on February 10, and they approved our loaning $100,000, payable $25,000 a year, secured by real estate and chattel mortgage on the present plant and equipment, plus the new addition. We have attempted to discourage Hans Forster from building at this time, but he has a number of logical arguments, and we finally committed to go along on the above basis because of our past experience with Hans Forster and on the strength of his financial statements."

No further questions.

The Court: Anything, Mr. Patten?

Mr. Patten: Yes, sir. May I read part of Exhibit 134 to the Jury?

The Court: Are those notes?

Mr. Patten: No, sir; it is a financial statement, a form at the bottom of the financial statement:

"To Peoples National Bank of Washington: The undersigned, for the purpose of procuring credit from time to time from you for the negotiable paper of the undersigned, or through endorsement, guarantee or discount of the paper [3246] of others or

(Testimony of Philip A. Strack.)

in any other manner, directly or indirectly, furnishes you with the foregoing and the following statement and information contained on both sides of this sheet, both written and printed, and including supplemental statement below, which fully and truly sets forth the financial condition of the undersigned on the date stated, which you may rely upon as continuing to be full and accurate, unless and until notice of change is given you. The undersigned has no liabilities of any nature whatsoever other than as stated below, and agrees to notify you promptly of any change that reduces or in any way affects adversely the pecuniary responsibility of the undersigned."

There are some other paragraphs which don't appear important.

And, "Signed, Hans Forster; dated 4/6/50."

That is all.

Q. (By Mr. Brody): Mr. Strack——

The Court: (Interposing) Just a moment. Is there anything further? [3247]

Mr. LeSourd: Nothing further.

Mr. Brody: I am sorry.

Q. (By Mr. Brody): Would you look at Exhibit 34. Is that a standard form of the Peoples National Bank? A. Yes, it is.

Q. And can you state on whom you relied for the financial information contained in that form; on whom the Bank relied?

Mr. LeSourd: If he knows.

A. Mr. Brody, I don't believe that I can testify

(Testimony of Philip A. Strack.)

as to the origin of this information. I have testified that we relied for years on Hicks Taylor for the financial information concerning Hans Forster's enterprises, or any additional information that was required to explain items on the statement, but as far as this particular statement is concerned, I can't verify as to the source of that information.

Q. (By Mr. Brody): Well, until the time that Mr. Forster and Mr. Taylor became disassociated, did you ever rely on any other accountant for information relating to the affairs of Mr. Forster?

A. Any other accountant?

Q. That is correct. [3248]

A. No, we did not.

Mr. Brody: That is all.

Mr. Moriarty: That is all.

Mr. LeSourd: No questions.

Mr. Keesling: No questions.

The Court: That is all, Mr. Strack.

(Witness excused.)

Mr. Brody: Mr. Donaldson. [3249]

FRANK B. DONALDSON

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Will you please state your full name once more, Mr. Donaldson?

A. Frank B. Donaldson.

(Testimony of Frank B. Donaldson.)

Q. And your residence?

A. Mercer Island.

Q. What is your occupation, Mr. Donaldson?

A. I am with the Peoples National Bank.

Q. And what position do you hold at the Peoples National Bank? A. A Vice-President.

Q. How long have you been with the Peoples National Bank, Mr. Donaldson?

A. Since December 15, 1926.

Q. And will you state briefly what positions you have held at the Peoples National Bank?

A. Teller, Credit Manager, Assistant Cashier, Assistant Vice-President, and presently, Vice-President.

Q. How long have you known Mr. Forster?

A. Since about 1930 or 1931. [3250]

Q. Can you state in what connection you met Mr. Forster?

A. In connection with his operations and loans thereof of the Bank.

Q. Can you state since your first acquaintance with him what the nature of your transactions with Mr. Forster have been?

Mr. Moriarty: This is quite remote, if your Honor please.

The Court: I don't know the purpose of the testimony. Is this character?

Mr. Brody: No, this is not a character witness, and this is a preliminary question.

Mr. Moriarty: We had it on direct and cross-examination of this witness.

(Testimony of Frank B. Donaldson.)

Mr. Brody: Your Honor, it simply——

Mr. Moriarty: (Interposing) On February 4th or 5th, I believe, the gentleman appeared the last time.

Mr. Brody: It is simply to identify this witness for the Jury and one or two preliminary questions.

The Court: You may proceed.

The Witness: Will you repeat the question for me? [3251]

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. In discussing financial needs and financing the acquisition of new plants and building and equipment.

Q. (By Mr. Brody): Did your negotiations or transactions with Mr. Forster mostly concern the borrowing of money from the bank by Mr. Forster?

A. That is correct.

Q. Are you acquainted with Mr. Hicks Taylor —another defendant in this case?

A. I am.

Q. How long have you been acquainted with Mr. Taylor?

A. I would say approximately the same time; since around 1930 or '31.

Q. Have you dealt with Mr. Taylor in connection with the affairs of Mr. Forster?

A. Yes. We have depended upon him in our discussions, yes.

(Testimony of Frank B. Donaldson.)

Q. Has Mr. Taylor from time to time accompanied Mr. Forster in discussions with you?

A. Yes, he has. [3252]

Q. And what part did Mr. Taylor play in those discussions?

A. Primarily, in enlightening us or in going over items of the financial statement itself.

Q. Did you receive, or did the Bank receive, periodic financial statements from Mr. Forster and the businesses in which he was interested?

A. Yes, we did.

Q. Approximately how often?

A. At least, annually, and occasionally, we would have interim statements.

Q. Did you ever discuss those statements with Mr. Taylor? A. Yes, we have.

Q. Did you ever discuss them with Mr. Forster?

A. Frequently, he would be in with Mr. Taylor, but we had to depend upon Mr. Taylor to give us the information we wanted from the statement.

Q. And did you rely on Mr. Taylor as the author of those statements?

A. Yes, we always believed so.

Q. And did you rely on his accounting knowledge and reputation?

Mr. Moriarty: Object to the form of the question. [3253]

The Court: Objection sustained.

Q. (By Mr. Brody): Now, in the years 1945

(Testimony of Frank B. Donaldson.)

through 1949, did you have dealings with Mr. Forster and Mr. Taylor? A. Yes.

Q. Did you participate in any way in the acquisition of the—of what later became Apex Farms, by Mr. Forster?

A. I was in some of the discussions, yes.

Q. Did Mr. Taylor participate also in those?

A. He was present at some of the discussions, yes.

Q. And what part did he play in those negotiations and discussions?

A. Again, in giving us information on the financial details.

Q. Now, when you say "information on the financial details," would you state——

A. (Interposing) Well, as to the statements, and as to what financing was going to be required for plant and equipment, and the procedure of repayments.

Q. Now, did you ever ask Mr. Forster to explain a financial statement to you?

A. We have, yes.

Q. Did you obtain a satisfactory result? [3254]

A. No.

Mr. Moriarty: Objected to as calling for a conclusion of the witness.

Q. (By Mr. Brody): And——

Mr. Moriarty: (Interposing) Just a moment.

The Court: I think the objection will be overruled, Mr. Moriarty.

Mr. Moriarty: All right.

(Testimony of Frank B. Donaldson.)

Q. (By Mr. Brody continuing) ——on such occasions, would you receive any directions from Mr. Forster as to obtaining of further information?

A. Yes, he frequently would refer us to Mr. Taylor for further information.

Q. Now, Mr. Strack has testified concerning the plans for the construction of the Alpine Ice Cream Company. Did you take part in negotiations relating to a loan so that Mr. Forster could build an ice cream plant?

A. Yes, I was in quite a number of the discussions.

Q. Did Mr. Taylor participate in those discussions and negotiations?

A. He was in several of them, yes, sir.

Q. And will you state what part he played?

A. Well, getting us financial statements as to the existing condition of Hans Forster's enterprises and projecting the financing as to what would be required, and so on.

Q. And do you have a recollection of this meeting which took place in February, 1948?

A. Yes, I do.

Q. And can you recall that Mr. Forster's personal assets were reviewed at that time?

A. There was a discussion on his personal assets, yes.

Q. And were his bank accounts mentioned?

A. Yes.

Q. And could you state specifically what bank accounts of his were mentioned?

(Testimony of Frank B. Donaldson.)

A. Mentioning the Washington State Bank at Issaquah and our Bank.

Q. And did Hicks Taylor attend that meeting?

A. He was present, yes.

Q. Now,——

Mr. LeSourd: (Interposing) I might suggest to your Honor that this has been gone over before. Mr. Donaldson was previously on the stand. If there is anything new, I have no objection.

Mr. Brody: I don't believe this witness was able [3256] on cross-examination to go into these matters.

The Court: You may proceed.

Mr. Moriarty: As I remember it, he went rather fully.

Q. (By Mr. Brody continuing) Now,——

Mr. Moriarty: (Interposing) He was about two days on the stand.

The Court: You may proceed.

Q. (By Mr. Brody continuing) Did you participate in negotiations relating to remodelling of the Apex Farms?

A. In—a few times, but not too frequently, no.

Q. Do you know whether or not the bank loaned any money to facilitate that project?

A. For the Apex?

Q. Yes. A. Yes, sir.

Q. Do you know whether or not Mr. Taylor participated in the negotiations leading up to those loans?

A. It is my understanding that he was present.

(Testimony of Frank B. Donaldson.)

Mr. Moriarty: Just a moment. I move to strike [3257] the answer as not responsive, based on hearsay.

I move it be stricken, and the Jury instructed to disregard it.

Mr. Brody: I will withdraw it.

The Court: You withdraw it?

Mr. Brody: Yes.

The Court: All right, the question may be withdrawn, and the Jury will disregard the answer.

Q. (By Mr. Brody): Now, in your financial dealings, Mr. Donaldson, with Mr. Forster, by whom were you employed when you entered into those transactions and dealings?

Mr. Moriarty: Objected to as repetitious. He has testified two or three times.

Mr. Brody: This goes to Mr. LeSourd's cross-examination as to whether or not these——

Mr. Moriarty: (Interposing) Mr. LeSourd hasn't cross-examined this witness.

Mr. Brody: Mr. LeSourd's cross-examination of Mr. Forster.

Mr. Moriarty: Then he can't compare——

The Court: (Interposing) Just a moment. I don't think there is any question.

Mr. Donaldson was employed by the Bank at all times, were you not? [3258]

The Witness: Yes, sir.

Q. (By Mr. Brody): Did you ever receive any compensation from Mr. Forster for financial advice? A. No, sir.

(Testimony of Frank B. Donaldson.)

Q. And whose interests were you representing and protecting during your negotiations with Mr. Forster? A. The Peoples National——

Mr. Moriarty: (Interposing) Objected to as immaterial and repetitious, whose interests. He was employed by——

The Court: (Interposing) Objection sustained.

Q. (By Mr. Brody): Now, are you acquainted with Mr. Erickson, a defendant in this case?

A. Only since the case has commenced.

Mr. Brody: You may inquire.

Cross Examination

Q. (By Mr. Moriarty): I take it that you discussed matters in the absence of Mr. Taylor with Mr. Forster? A. Oh, yes; we have.

Q. Many times? [3259] A. Yes.

Q. He was in the Bank almost weekly?

Mr. Griffin: Objected to as repetitious. He testified sometimes twice a week on your examination.

Mr. Moriarty: If that is admitted, I withdraw the question.

Mr. Griffin: That was in February.

Mr. Moriarty: If it is conceded, I withdraw the question.

Q. (By Mr. Moriarty): In these discussions with Alpine Ice Cream Company, calling your attention to Exhibit 135, and before I ask the question I would like you to refresh your recollection, if it does,—that paragraph that I pointed to.

That is your memorandum, is it not?

(Testimony of Frank B. Donaldson.)

A. Yes, that is correct.

Q. And it refers to an attorney being consulted. Who was the attorney?

A. I am sorry; I would not know who his attorney would be.

Q. Would it be Mr. Jones of Jones and Bronson, or a member of his firm and staff?

A. As I recall, about this time Mr. Forster had some attorney with Jones and Bronson, Jones or some [3260] name like that—one member.

Q. Mr. McEwen? A. Mr. McEwen, yes.

Q. Mr. Grill?

A. There was a McEwen he used for some of his work there.

Q. You were discussing taxes and tax advice at that time, weren't you?

A. In using the corporation, yes.

Q. For the purpose of reducing taxes?

A. There was tax advantage to Mr. Forster. Apparently that had been recommended along those lines.

Q. Tax advantages are usually tax savings, aren't they? What other advantages are tax advantages except savings of taxes?

A. As I understood——

Mr. Griffin (Interposing): Objected to as not cross-examination.

The Court: Objection sustained.

Q. (By Mr. Moriarty): Mr. Forster was present at those discussions? A. Yes, sir.

Mr. Moriarty: That is all.

(Testimony of Frank B. Donaldson.)

Cross Examination

Q. (By Mr. LeSourd): Mr. Donaldson, Mr. Brody read to the Jury notes which I think were written by you in regard to the meeting of February, 1948, or a series of meetings, and in so reading, he—the note said that you had attempted to discourage Mr. Forster from building this building at Alpine Ice Cream. Would you call that financial advice?

A. No, sir, because——

Q. (Interposing): What sort of advice would you call that?

A. Because it involved too large a mortgage for us to attempt to underwrite. We didn't think it feasible.

Q. You wouldn't call that financial advice?

A. We were representing the Bank's interest at the time.

Q. In attempting to discourage him from putting up a building? A. That is correct.

Mr. LeSourd: That is all.

Cross Examination

Q. (By Mr. Keesling): Mr. Donaldson, I understand that during the Indictment period, from 1945 to 1950, or until 1953, you didn't even know Mr. Erickson? [3262]

A. That is correct. I knew him by name only.

Q. He didn't enter into any of this?

A. Not at all.

Mr. Keesling: No further questions.

Mr. Griffin: That is all.

The Court: That is all, Mr. Donaldson.

(Witness excused.) * * * * * [3263]

RAYMOND J. SCHNEIDER,

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Direct Examination

The Court: You have been sworn, Mr. Schneider, haven't you?

The Witness: Yes, sir.

Q. (By Mr. Cox): I believe, Mr. Schneider, that you testified when you were on the stand previously that when you and Mr. Baskett and Mr. Forster first went into Renton, and took over the business of Renton Ice and Ice Cream Company from Mr. Williams, that it was thought best to keep Mr. Forster's name out of the picture, because Mr. Williams had some feeling about him because of the competitive situation; is that true?

A. Yes, sir.

Q. I am not sure about this because you have been in Court some times and not other times. Were you—you were here during part of the time when Mr. Forster testified, were you not?

A. Yes, I was.

Q. Were you here on the day when he testified, as I recall it, that there may have been certain [3323] competitive reasons of his own for his wanting to stay in the background?

(Testimony of Raymond J. Schneider.)

A. I heard him testify about Mr. Williams, and that might have been mentioned, too.

Q. Very well; did you try, as far as possible, to keep Mr. Forster's participation in the Renton Ice and Ice Cream Company in the background, as far as the public was concerned?

A. Yes. It wasn't difficult. We just didn't show that he was in the picture.

Q. You filed an application shortly after you started business for a wholesaler's permit, with the Federal Alcohol Administration, did you not?

A. Yes.

Mr. Cox: Will you mark this, please?

The Clerk: Defendants' Exhibit A-67 marked for identification.

(Defendants' Exhibit A-67 marked for identification.)

Q. (By Mr. Cox): Now, Mr. Schneider, handing you what has been marked for identification as Defendants' Exhibit A-67, can you tell us what that is?

A. It is probably a statement that we furnished to the Alcohol Tax Unit in getting our permit.

Q. Is there anything on the back of the document which would indicate whether or not it was in fact filed with the Alcohol Unit and received by them?

A. Received October 16, 1942, District Supervisor, Alcohol Tax Unit, Seattle, Washington.

Q. In asking you to refresh your recollection from that document, Mr. Schneider, what statement

(Testimony of Raymond J. Schneider.)

did you make to the Alcohol Tax Administration as to the ownership of stock in the Renton Ice and Ice Cream Company?

A. Capital stock, fully paid in cash. Do you want me to read this?

Q. The portion referring to the stock, yes, sir.

Mr. Griffin: Just a moment.

Q. (By Mr. Cox continuing): I don't want you to read it, but to refresh your recollection, if it does, as to what you said—who you said were the owners of the stock in Renton Ice and Ice Cream Company at that time. A. Yes.

Q. Having read that, does it refresh your recollection? Do you recall what you then advised the [3325] Alcohol Tax Administration?

A. I can tell you what this paper says.

Q. This doesn't refresh your recollection as to what was then said?

A. I wouldn't think so.

Mr. Cox: Well, we would then at this time offer A-67 in evidence, your Honor.

May I have it, please?

(Whereupon, exhibit was handed to Mr. Cox by the witness.)

The Witness: I may not have gotten your meaning, but that is my answer.

Mr. Obenour: No objection.

Mr. Griffin: May I ask one question, if the Court please?

The Court: You may.

(Testimony of Raymond J. Schneider.)

Mr. Griffin: Did Mr. Taylor prepare this, Mr. Schneider?

The Witness: Yes, sir.

Mr. Griffin: I have no objection.

Mr. Keesling: I have no objection.

The Court: Is that A-67?

Mr. Cox: Yes, your Honor.

The Court: A-67 may be admitted, there being no objection. [3326]

(Defendants' Exhibit A-67 admitted in evidence.)

Q. (By Mr. Cox): Now, will you read to the Jury what it says there, Mr. Schneider, with respect to the ownership of stock in Renton Ice and Ice Cream Company?

A. Yes; it says, "R. J. Schneider, Issaquah, Washington, President, 6,000 shares; C. M. Baskett, Issaquah, Washington, Vice-President, 6,000 shares; L. H. Taylor, Seattle, Washington, Secretary-Treasurer, 6,000 shares."

Q. And you signed that statement, did you, Mr. Schneider? A. Yes.

Q. Before a Notary?

A. Apparently. That is a Notary seal on here.

The Clerk: Defendants' Exhibit A-68 marked for identification.

(Defendants' Exhibit A-68 marked for identification.)

Mr. Griffin: Let me see that a moment.

(Whereupon, Defendants' Exhibit A-67 was handed to Mr. Griffin by the witness.) [3327]

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Cox): Handing you, Mr. Schneider, what has been marked for identification as Defendants' Exhibit A-68, can you tell us what that is?

A. It is a similar sheet.

Q. Would that appear to be another report prepared for submission to the Federal Alcohol Administration?

A. To someone. At least, it was prepared.

Q. Is it in the same form with the same columns and sub-headings as appear on Defendants' Exhibit A-67?

Mr. Griffin: Objected to as immaterial.

Mr. Cox: It is preliminary, your Honor.

The Court: That speaks for itself. Are you asking identification now?

Mr. Cox: Yes, your Honor.

The Court: Well, does the witness recognize it, at all? Do you recognize that?

The Witness: Yes, I do.

The Court: What is it?

The Witness: It is a similar statement to his. There is more to it.

The Court: When you say "similar to this", similar to the first one shown here?

Mr. Cox: A-65. [3328]

The Witness: Submitted to the Alcohol Tax Unit. It is apparently for a similar purpose. There is much more information on it. It is signed but not notarized.

The Court: For the Renton Ice?

(Testimony of Raymond J. Schneider.)

The Witness: Yes, Renton Ice and Ice Cream Company.

Mr. Obenour: What is the date on it, please?

The Witness: The new one?

Mr. Obenour: Yes.

The Witness: The date? It says "22nd day of September, 1942."

Q. (By Mr. Cox): What is the date of A-67, Mr. Schneider?

A. 14th day of October, 1942.

Mr. Cox: We offer A-68 in evidence, if the Court please.

The Court: May I see them, Mr. Schneider?

(Whereupon, Exhibits were handed to the Court by Mr. Schneider.)

(Whereupon, there was a brief pause.)

Mr. Griffin: May I inquire, if the Court please? Who prepared Exhibit A-68, if you know?

The Witness: Mr. Taylor. [3329]

Mr. Griffin: I have no objection.

Mr. Obenour: We have no objection.

Mr. Keesling: No objection.

The Court: A-68 may be admitted.

(Defendants' Exhibit A-68 admitted in evidence.)

Q. (By Mr. Cox): Mr. Schneider, would you read to the Jury the distribution of ownership of shares of stock reflected on A-68?

A. Stockholders and directors are as follows: "R. J. Schneider, President, Director, 6,000 shares owned; C. M. Baskett, Vice-President, Director,

(Testimony of Raymond J. Schneider.)

6,000 shares owned; L. H. Taylor, Secretary-Treasurer, and Director, 10 shares owned; Hans Forster, stockholder only, 5,990 shares owned."

Q. Now, A-68, Mr. Schneider, you signed but it was not completed before a Notary; is that correct? A. That is correct.

Q. Is there anything on A-68 to indicate it was ever submitted to the Alcohol Tax Division?

A. I believe not. [3330]

Q. After Mr. Taylor had prepared Defendants' Exhibit A-68 and submitted it to you, did you request him to prepare Defendants' Exhibit A-67 in order to conceal the ownership in stock in Renton Ice and Ice Cream Company by Mr. Forster?

A. No.

Q. That was the effect of the change, wasn't it, Mr. Schneider?

A. Apparently it was, yes.

Mr. Cox: At this point, if it please the Court, I advise your Honor and Counsel that I will start cross-examining Mr. Schneider.

The Court: You mean you go into matters covered on the Government's case?

Mr. Cox: Yes. That completes the additional matter we wish to bring out through Mr. Schneider at this time.

The Court: I might advise the Jury that Mr. Schneider testified, as you recall, as part of the Government's case. Subsequent to his leaving the stand, Counsel for Mr. Taylor asked permission to inquire further on the matter that they were not

(Testimony of Raymond J. Schneider.)
advised of at the time they examined him earlier. The Court suggested that the examination be conducted as a part of their case, or, rather, at the time that they [3331] put their case in; so that at this time now the examination is as to matters that were testified to in connection with his examination when he testified as part of the Government's case.

Mr. Cox: Perhaps, your Honor, in view of the time, we might take a recess before we start on it.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess.

The Court calls your attention to the admonition given on similar occasions, and asks that you heed that admonition on this occasion.

(Whereupon, the Jury retired from the Courtroom.)

(Whereupon, at 2:45 o'clock p.m., a recess was had in the within-entitled and numbered cause until 3:00 o'clock p.m. April 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

Mr. LeSourd: If your Honor please, at this time we file requested instructions of the Defendant Taylor, an original and one copy. Is that what your Honor desires?

The Court: Yes. You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.) [3332]

It is stipulated that the Jury and all Defendants are present in the courtroom?

(Testimony of Raymond J. Schneider.)

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Cox.

Mr. Cox: Thank you, your Honor.

Q. (By Mr. Cox): Mr. Schneider, when you testified on behalf of the Government sometime in February of this year, you testified, did you not, regarding the addition of the figure "1" in front of nine figures listed in your accounts payable record which is in evidence here as Exhibit 212, did you not? A. Yes.

Q. Did you hear Mr. Eppler's testimony when he was on the stand? A. Some of it.

Q. Were you here at the time when, as I recall it, he testified that Mr. Brody had called these additions to his attention when he turned this report over to Mr. Eppler?

A. I believe I heard that.

Q. Isn't it true, Mr. Schneider, that you were the one who had originally called these figures to the attention of Mr. Brody? [3333]

A. It is possible.

Q. Isn't it true, Mr. Schneider, that you have previously stated that you did?

A. I am not sure.

Mr. Cox: Would you mark this, please?

The Clerk: Defendants' Exhibit A-69 marked for identification.

(Defendants' Exhibit A-69 marked for Identification.)

Q. (By Mr. Cox): Mr. Schneider, handing you

(Testimony of Raymond J. Schneider.)

what has been marked Defendants' Exhibit A-69 for identification, your testimony was taken, was it not, under oath before Mr. Eppler and Mr. Marx and a shorthand reporter in the presence of your attorney, Mr. John W. Dobson, April 11, 1951?

A. I would say so, yes.

Q. Handing you a transcript of that interview, and directing your attention to question No. 43, I ask you to refresh your recollection from that, and tell the Jury whether or not you have previously stated that it was you who called the alteration in the July, 1947 accounts payable record to the attention of Mr. Brody?

A. "In giving them to him, I called his [3334] attention to the alterations which seemed to be on the July, 1947, total."

Q. And the "him" referred to there is Mr. Brody, is that correct?

A. That is Mr. Brody, yes.

Q. Now, Mr. Schneider, as I recall your testimony on direct, you stated quite positively that you yourself saw Mr. Taylor insert these nine figure "1's" in front of nine figures which you had written into the accounts payable record for July, 1947?

A. Yes, that is right.

Q. Have you ever, prior to taking the stand in this case, made a contrary statement regarding the manner or way in which these alterations were made or in which they came to your attention?

A. I wouldn't be sure.

Q. You wouldn't be sure?

(Testimony of Raymond J. Schneider.)

A. That I did.

Q. Would you be sure that you didn't?

A. Not intentionally. That would have been my statement, right there, that I saw him do it.

Q. That would be your testimony now, that you saw him do it? A. Yes; yes, sir.

Q. Now, I will ask you, Mr. Schneider, if on [3335] this same occasion that we have referred to before, on April 11, 1951, your testimony was not taken in Room 1004-A, of this building, and you were present, Mr. John W. Dobson, your Attorney, was present, Mr. Eppler, and Mr. Marx were present, and Eleanor Anderson was present as recorder; do you remember that occasion?

A. Yes.

Q. And I will ask you, Mr. Schneider, if at that time, the following questions were not asked of you, and if you did not make the following answers:

Mr. Cox: And, if the Court please, I would like to read a series of questions and answers all relating to this question of the alterations allegedly made in the July, 1947 accounts payable record.

Mr. Griffin: I understand this is for impeachment?

Mr. Cox: Yes, sir.

Mr. Griffin: I object as incompetent, irrelevant and immaterial, and to a procedure that is eminently unfair. This witness was called by the Government, and now, for the purpose of impeachment on cross-examination, the Government has supplied Mr. Taylor's counsel with the transcript of that

(Testimony of Raymond J. Schneider.)

testimony for impeaching the Government's witness, and if they [3336] proceed on that basis, I will then be compelled to ask for a mis-trial as to Mr. Forster.

Mr. Cox: I am sure the Government in presenting Mr. Schneider presented him for the relation of such facts known to him and relevant to the case. They asked the questions and he gave the answers. He was vouched for by the Government to the extent that the Government sought to elicit, that is true, but that doesn't alter the fact that he may have made inconsistent statements at a prior time, or the fact that any defendant in this case adversely affected by his testimony should have free access to his record of prior statements.

The Court: In what respect Mr. Griffin, are you objecting?

Mr. Griffin: There is a common rule of law that when a party calls a witness, you vouch for the truth and veracity of that witness.

The Government called this witness and examined him as to these "1's" in that exhibit 212. I have never seen the document that counsel has before him now, supplied him by the Government, for the purpose of impeaching the Government's own witness as to the very items that they called him in chief upon.

Mr. Cox: The Government is not required to [3337] suppress evidence simply because they may have offered Mr. Schneider as a witness.

Mr. Moriarty: The Government at this time

(Testimony of Raymond J. Schneider.)

wishes to make the statement at this time that all statements of all defendants at any time have been available to all defendants, and the Court will recall that Mr. LeSourd demanded in open court the production of this document, which we did in response to your demand.

The Court: I don't believe that the Court can sustain the objection. I don't know whether the matter is impeaching, but——

Mr. Griffin (Interposing): I don't either, but I am simply stating, in fairness to the Court—it may or may not make any difference—my position, if it proceeds and turns out to be impeaching, that I would be bound to ask for a mis-trial.

Mr. Keesling: Before the questions are read and answers read, I would like to request that we be allowed to examine the questions and answers.

Mr. Cox: That is entirely agreeable.

Mr. Moriarty: Have you asked for the opportunity?

Mr. Keesling: No, this is the first time this came up. [3338]

The Court: Do you wish to read them now?

Mr. Keesling: Yes.

The Court: You may. May I take a look at the questions, first?

Mr. Cox: If the Court please, the questions we would like to direct your Honor's attention to are the questions 10 through 19, and 43 through 45.

(Whereupon, document was handed to the Court by Mr. Cox.)

(Testimony of Raymond J. Schneider.)

(Whereupon, there was a brief pause.)

Mr. Cox: I would state to the Court that in addition to these questions, there is one further matter not covered in the transcript of this interview which we believe, taken with the questions and answers here recorded, is impeaching and definitely casts reflection upon Mr. Schneider's credibility.

The Court: Is the first question or two there essential, Mr. Cox?

Mr. Cox: We feel the first one is, your Honor.

The Court: Where exception was taken by Counsel?

Mr. Cox: Yes.

(Whereupon, there was a brief pause.)

Mr. Keesling: If the Court please, with [3339] respect to these, the Defendant Erickson joins in the objection made by Mr. Griffin, and particularly in view of this, that the demand for this was just recently made from the Government, and for that reason, it amounts to the Government impeaching its own witness, because the only way that the Defendant, or Mr. LeSourd, could have known of any impeaching statements would be upon information of the Government, so that, in effect, the Defendant Erickson feels that this is impeaching of the Government's witness.

The Court: The Court will overrule the objection. You may proceed. There is a question about the first one. I don't believe that that—the only question here involved is, as I understand it, whether this witness testified that he saw Mr. Taylor

(Testimony of Raymond J. Schneider.)
make the changes in the "1's". That is the question involved?

Mr. Cox: That is the question we are getting to now. This entire colloquy related to that, directed to that month and that year, and the changes, if any, that were made at that time.

Mr. Moriarty: I don't think, if your Honor please, that this is impeaching to any questions that this witness has testified to on direct.

The Court: Well, Mr. Cox states that this [3340] taken together with some other material——

Mr. Cox (Interposing): Yes, your Honor.

The Court (Continuing): ——would constitute impeachment.

I will caution the Jury that this testimony here relates to what this witness may have said on another occasion. It goes solely to the credibility. It is permitted so that the Jury can determine whether this witness has said anything at any other time that would serve to raise any question as to whether or not you wish to believe him or what credulence you are going to give his testimony. It may or may not affect it, but it has no bearing on any other issue in the case at all.

Mr. Moriarty: May the record show that the Government objects to this as not impeachment?

The Court: Yes, the record will so show.

Mr. Cox: May I proceed?

Mr. Moriarty: My objection is made to each question. I have a motion to make when he is through.

(Testimony of Raymond J. Schneider.)

Mr. Keesling: We join in the objections of all counsel.

The Court: It is clear that all counsel are objecting, except Mr. Cox and Mr. LeSourd.

Mr. Cox: May I proceed, your Honor? [3341]

The Court: You may.

Q. (By Mr. Cox): At the time about which I questioned you a short time ago, Mr. Schneider, were you asked the following questions and did the colloquy indicated here take place, and did you give the answers which I will read:

"Question No. Ten: Describe the falsification in the corporation's accounts payable for the month of July, 1947.

"Attorney Dobbins: I object to the question by reason of the use of the word 'falsifications'. Do you want to ask him about the changes made?

"Mr. Eppler: I would rather say 'falsifications' and if he doesn't want to answer, that is all right."

Then there is a parenthetical statement here that his attorney has discussion with his client and then the answer.

The Court: That, I think, you might skip. That serves no purpose.

Mr. Cox: That conference or the answer?

The Court: That conference, conference with [3342] the attorney, and the next answer.

Mr. Cox: Your Honor wishes me to skip the next answer?

The Court: Yes.

(Testimony of Raymond J. Schneider.)

Mr. Cox: Well, we in turn would except to that portion of your Honor's ruling.

Mr. Griffin: Now, everybody objects.

Mr. Cox: Which makes it unanimous.

Q. (By Mr. Cox continuing):

"Question Number Eleven: Will you examine the accounts payable record for July, 1947, for the corporation and state whether or not any alterations have been made?

"Answer: Alterations, you said?

"Mr. Eppler: Yes.

"Mr. Schneider: There were alterations made on this page after I had made the entries."

Was that question asked you, and did you give that answer? A. I think so.

Mr. Moriarty: Objected to, not impeaching.

Mr. Cox: The single question is a part of the whole, and, taken alone, may not be.

Q. (By Mr. Cox): "Question Twelve: What were these alterations, Mr. Schneider?

"Answer: There are several instances where the figure 'I' was placed before my proper entry, and the total then made to include these amounts."

Was that question asked, and did you give that answer? A. I think so.

Mr. Cox: Now, if the Court please, and with the consent of counsel since they are objecting anyway, I would omit the next question, which was simply his recital of the accounts payable records which were altered, and they are the ones which Mr. Marx just testified to. If you prefer, I will read——

(Testimony of Raymond J. Schneider.)

Mr. Griffin: (Interposing) Don't assume any consent from me on this examination. I am objecting entirely.

Mr. Moriarty: We object.

Mr. Cox: We will read it, then. [3344]

Q. (By Mr. Cox): "Question Thirteen: Will you point out specifically which items these were? Give the date, the payee, and the amount you had entered.

"It appears to me that on the entry on July 15, to the Seattle Brewing Company, there is a '1' placed in front of the amount $886.40. Similarly, on July 18, a '1' placed in front of the item to Issaquah Creamery, which was originally $426. Similarly, on the 21st, Issaquah Creamery, a '1' placed in front of the original $274. Likewise, on the 22d, to Seattle Brewing, $886.40. A '1' had been placed before those figures.

On the 23d, exactly the same, a '1' placed before $886.40.

On the 25th, to Issaquah Creamery, a '1' placed before $448.50.

On the 29th, a '1' placed in front of the Issaquah Creamery, $585.50.

On the 28th, Seattle Brewing, a '1' placed ahead of $581.64; and on the 29th, Seattle Brewing, a '1' placed before $886.40, [3345] all of which were not in my handwriting, and not made by me."

Was that question asked you, and did you give that answer at that time? A. I think so.

Q. "Question Fourteen: Was there any basis in

(Testimony of Raymond J. Schneider.)

fact for adding $1,000 on each of these nine items?

"Answer: Not that I know of, as it was done by Mr. Taylor."

Was that question asked you, and did you give that answer? A. I would think so.

Q. "Question Fifteen: When these items were paid, were the amounts increased by the $1,000 items, or were the $1,000 items excluded from the amount paid to the account?

"Answer: I pay from the statement which would indicate the original figures, and not the additional $1,000 on each one, although I don't go back to this and make any check or verify it." [3346]

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Sixteen: Will you describe how it came to your knowledge that Mr. Taylor made these alterations?

"Answer: He had told me not to total the month's entries as he might want to make some adjustments. When he was through, I noticed the large total, and asked him how it came about, and how it would affect our books. His answer was that it was an adjustment which he would readjust later."

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Seventeen: Do you know whether or not he ever made a later adjustment?

"Answer: He never told me that he had, but I have reason to believe that he did. I don't believe that he told me that [3347] he did."

(Testimony of Raymond J. Schneider.)

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Eighteen: Did Mrs. Lovenger know of these alterations?

"Answer: I believe not."

Did you give that answer to that question?

A. I think so.

Q. "Question Nineteen: Have you ever discussed these or other alterations in the corporate records with Mrs. Lovenger?

"Answer: I believe not."

Did you give that answer to that question?

A. I think so.

Q. Turning to question forty-three: "How did the alterations in the accounts payable record first come to the attention of Mr. Taylor's attorney?"

Mr. Cox: I believe this has been covered, if the Court please, with reference to this conversation [3348] with Mr. Brody so that we will skip that.

Q. (By Mr. Cox): "Question Forty-four: Had you previously discussed these alterations with anyone other than Mr. Taylor?

"Answer: I had not in my memory. I never thought much about it."

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Forty-six: Will you comment on the fact that Mr. Forster——"

Forty-five, I am sorry.

"How did you happen to think about it the first time?

(Testimony of Raymond J. Schneider.)

"Answer: I am not sure. In running over the older book, which this was, it occurred to me, as we ran through it, that some such thing had taken place at some time."

Were you asked that question, and did you give that answer? [3349]

A. I believe so, if it is there.

Q. Now, Mr. Schneider, in addition to the interrogation——

Mr. Griffin: Just a moment, if the Court please. I stated definitely that I would have a motion to make. I do not have a motion to make, because I agree with the Government, these questions are not impeaching.

Mr. Keesling: I withdraw my objection.

Mr. Cox: Very well.

M. Moriarty: Now, I move that they be stricken. There is no impeachment indicated.

Mr. Cox: We have one further matter to go into.

Mr. Moriarty: This goes to the matter you are completed with?

Mr. Cox: No, I am not. The further item I would take up is related to this item.

Mr. Moriarty: Very well.

Q. (By Mr. Cox): Now, in addition to this statement, from which I have been reading, and in addition to another interview which you had with Mr. Eppler and Mr. Marx, March 2, 1951, isn't it true, Mr. Schneider, that shortly before you were called as a witness in this case, [3350] you were

(Testimony of Raymond J. Schneider.)

interviewed at some length by Mr. Obenour and Mr. Eppler in connection with your testimony?

A. On or about what time?

Q. That took place, I believe, February 2, 1954, beginning at 5:00 p.m. in this building?

A. I think so.

Q. And at that time, Mr. Obenour and Mr. Eppler were present? A. I think so.

Q. And you were asked, among other things, at that time, about alleged alterations of the accounts payable for Renton Ice and Ice Cream for July, 1947, were you not? A. I think so.

Mr. Keesling: If the Court please, may I inquire if this is a written transcript?

Mr. Cox: No.

Mr. Moriarty: Who was present?

Mr. Cox: Mr. Obenour and Mr. Eppler.

Mr. Moriarty: Anyone else?

Mr. Cox: No one else but the witness.

The Court: Is there a question pending?

Mr. Cox: I believe there is, your Honor.

Q. (By Mr. Cox): Isn't it true that at that time, Mr. [3351] Schneider, you were specifically asked whether you saw Mr. Taylor make the addition of these nine "1's" which were added to certain of the figures for July, 1947, and that at that time, your answer was that you weren't certain about it?

A. I recall in one of their interviews, and there was more than one, that I definitely stated that I was sure. I don't recall saying that I was not sure.

Q. You don't recall ever having stated to Mr.

(Testimony of Raymond J. Schneider.)

Obenour, and Mr. Eppler, that you were not certain that Mr. Taylor had made the addition of these figures in the accounts payable record for July, 1947?

A. I recall telling them I was certain. I don't recall telling them that I was not certain.

Mr. Cox: We have no further questions.

Mr. Moriarty: I renew my motion, if the Court please.

Mr. Cox: It would seem to me, your Honor, that the disposition of the motion should await the proof, if we can establish it, of the final concluding statement, which is clearly impeaching. It is directly contradictory.

The Court: In other words, you have more testimony in connection with this? [3352]

Mr. Cox: Yes. We cannot establish that by a written statement. It requires oral statements.

Mr. Moriarty: Other than that last question, that you have, your record is here in writing?

Mr. Cox: That is correct, Mr. Moriarty.

Mr. Moriarty: My motion is addressed to the matter other than the last question that was asked. Counsel has made the representation that he will support it.

The Court: Well, the Court will wait until the matter is finally presented, if you do have any further testimony.

The Court asks the Jury to bear in mind that all this last portion here may be considered impeach-

(Testimony of Raymond J. Schneider.)

ing, or may not be. The Court may strike it, so that, have in mind that it may be stricken.

Now, you have completed your cross-examination, Mr. Cox?

Mr. Cox: Yes, your Honor.

The Court: Have you any——

Mr. Moriarty: We will withhold our cross-examination, if your Honor please, awaiting the ruling.

The Court: Is there no cross-examination on the first portion?

Mr. Moriarty: No, your Honor. [3353]

The Court: You understand that the only portion which may be stricken was that which came in after recess?

Mr. Moriarty: Yes.

Cross Examination

Q. (By Mr. Griffin): With reference to A-67, this alcohol unit document, was that an application for beer; do you know?

A. It was an application for——

Q. (Interposing) Beer and wine?

A. A Federal License to handle beer and wine.

Q. You were inquired whether you signed this before a Notary. Will you tell the Jury precisely who gave you that document and what you did with it and the condition of it when you last saw it?

A. Well, as I recall, I was given this to sign.

Q. By whom?

A. By Mr. Taylor; and I believe there was a

(Testimony of Raymond J. Schneider.)

form for a Notary's acknowledgment, but I never saw the Notary, nor did I see the acknowledgment put on there.

Q. When Mr. Taylor gave it to you, did you sign it? A. Yes, sir. [3354]

Q. And did you give it back to Mr. Taylor?

A. Yes, sir.

Q. And do you even know the Notary's name? Excuse me.

(Whereupon, Mr. Griffin withdrew the document from the witness.)

Q. (Continuing) Which would apparently be—I am looking at the seal A.C. or A.G. Forrest. Do you know any such individual or person?

A. No, I do not.

Q. Then you did not sign the document in the presence of a Notary Public?

A. No, I did not.

Q. Now, with reference to both exhibits A-67 and A-68, so far as you know, did Mr. Forster ever see either one of those documents?

A. Not as far as I know.

Q. When—was there a time in the incorporation of the Renton Ice and Ice Cream Company, on this Mr. Forster's becoming interested, that Mr. Taylor held the stock of both yourself, Mr. Baskett, and Mr. Forster? A. Oh, yes.

Q. With reference to A-68, which is also signed by you—correct? A. Yes. [3355]

Q. But the Notary line is left blank?

A. Yes.

(Testimony of Raymond J. Schneider.)

Q. Made out to be signed, however, the 22d day of September, 1942, is that correct?

A. That is correct.

Q. And this was also prepared by Mr. Taylor, is that correct? A. Yes, sir.

Q. I will ask you if it isn't a fact that as of September 22, 1942, the stock book in evidence of the Renton Ice and Ice Cream Company, exhibit A-7, shows no stock issued or standing in the name of Hans Forster on September 22, 1942?

A. September 22nd?

Q. September 22nd.

A. No, there isn't.

Q. I will ask you if it is not a fact that the stock book of the Renton Ice and Ice Cream Company, Exhibit A-7, shows the first issuance of stock to Hans Forster on September 23, 1942?

A. That is correct.

Q. In whose handwriting are those entries, if you know?

Mr. Moriarty: Is he qualified, Mr. Griffin?

Mr. Griffin: I am not a witness. I just asked [3356] if he knew. I don't know whether he does or not.

A. It looks like Mr. Taylor's.

Q. (By Mr. Griffin): And there is no receipt for the delivery of that stock certificate as shown in the stock book, is there?

A. No, there isn't.

Q. Do you know, or do you have any idea, when that stock was delivered to Mr. Forster?

(Testimony of Raymond J. Schneider.)

A. No, I don't.

Q. The Articles of Incorporation——

Mr. Griffin: If the Court please, the Secretary of State's copy fell out of this exhibit as I was using it. I don't know whether they were a part of the exhibit or not. They just fell out as I handed the exhibit to the witness. It is unimportant but I just want to account for it.

The Court: For its being there?

Mr. Griffin: For its being there; and I now have a document in my hand, unmarked. I am perfectly willing to stipulate it may be part of Exhibit A-7.

Mr. Cox: All right.

The Court: It is a certificate that Articles have been filed?

Mr. Griffin: Yes, showing filing of the [3357] Articles with the Secretary of State, August 15, 1938. Strike all of what I have said. This is the Trustee's certificate of the Renton Ice and Ice Cream Company, August 17, 1938. I don't see that it has any connection.

Mr. Moriarty: We suggest the exhibit be withdrawn, and returned to the party who first exhibited A-7.

The Court: All right; the exhibit may be withdrawn as not properly a part of the exhibit.

Mr. Griffin: Yes, your Honor.

The Court: I mean the certificate.

Q. (By Mr. Griffin continuing): After you signed and delivered these Alcohol—these permits, or applications,—to Mr. Taylor of the Alcohol Tax

(Testimony of Raymond J. Schneider.)

Unit, did you have anything further to do with them from that time?

A. Not that I know of; I have a copy of one somewhere in my files, but other than that, no.

Q. Do you even know which one was filed?

A. No, I wouldn't have, no, until I saw the stamp on there.

Mr. Griffin: That is all. I think I should reserve on this other issue on which you Honor [3358] is withholding ruling.

The Court: Yes. I am withholding ruling until there is further testimony, as Mr. Cox indicated.

Mr. Griffin: Yes, your Honor.

The Court: So that Mr. Schneider will have to be available.

Cross Examination

Q. (By Mr. Keesling): Mr. Schneider, showing you Exhibit 212 for the month of July, 1947, and referring to these nine "1's", that were placed in the thousand category in front of various accounts payable in that July 1947 period——

A. (Interposing) Yes.

Q. (Continuing) ——Mr. Cox—in answer to Mr. Cox's questions, your testimony was that, or at least in his question he stated that, in an unrecorded conference with Mr. Obenour, you might have said that you were not sure you saw Mr. Taylor enter those.

At this time, did you see, or did you not see Mr. Taylor enter those nine one-thousand dollar figures?

A. I saw him.

(Testimony of Raymond J. Schneider.)

Q. Are you sure of that? [3359]

A. Yes, I am sure of that.

Mr. Keesling: No further questions.

Mr. Moriarty: We have reserved ours.

The Court: Any redirect?

Mr. Cox: Yes, your Honor.

The Court: This only goes——

Mr. Griffin: (Interposing) I think before that I should have one question.

Cross Examination

Q. (By Mr. Griffin): With reference to Exhibit 212, in whose handwriting is the total, eighteen thousand—what is it? A. $253.11.

Q. $253.11. A. Yes.

Q. In whose handwriting is that?

A. That is Mr. Taylor's.

Q. And in whose handwriting is the second item, $18,277.36? A. That is mine.

Q. And in whose handwriting are the words "liquid carbonic," is it $24.25?

A. That is mine.

Q. That is yours; now, so that the Jury may see what we were referring to on this Exhibit 212, just turn [3360] this way, Mr. Schneider.

The first total here, $18,253.11, you say is Mr. Taylor's handwriting? A. Yes.

Q. And you added the sub of $24.25?

A. Yes, sir.

Q. And added that to Mr. Taylor's figure?

A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Mr. Griffin: That is all.

Redirect Examination

Q. (By Mr. Cox): Mr. Schneider, handing you again Defendants' Exhibit A-67, the application for beer license, dated October 14, 1942, isn't it a fact that you actually signed that document in Mr. Taylor's office in the presence of Mr. Forrest, the Notary named thereon? A. No.

Q. You have a definite recollection that you signed it somewhere else?

A. I have a definite recollection of never meeting or knowing Mr. Forrest.

Q. Aside from knowing him, did you ever sign a document in Mr. Taylor's office in the presence of a Notary, whether you knew him or not?

A. I don't recall that I did. [3361]

Q. Do you have a definite recollection that you never did? A. No.

Q. You testified, I believe, in answer to a question by Mr. Griffin, that there was a time when Mr. Taylor held all the stock in this company?

A. I think that is right. I never had mine delivered to me for two or three or four years.

Q. By that, you mean the actual certificates evidencing ownership of stock in the corporation had not been physically delivered to you?

A. That is right.

Q. During this entire period, however, Mr. Schneider, did you and Mr. Baskett, and later, Mrs.

(Testimony of Raymond J. Schneider.)

Baskett, and Mr. Forster act as stockholders of the Renton Ice and Ice Cream Company?

A. Yes, sir.

Q. Had you and Mr. Baskett and Mr. Forster paid the six thousand dollars apiece which you invested in the stock of the Renton Ice and Ice Cream Company, in that corporation?

A. I did, I know.

Q. And Mr. Forster?

A. I would think so.

Q. And Mr. Baskett? [3362]

A. Yes.

Q. As a matter of fact, haven't you testified that all but two thousand dollars of that amount was required for the down payment made to Mr. Williams? A. Yes.

Q. And that was made at the inception of this corporation: is that correct? A. Yes.

Q. Would you say, therefore, Mr. Schneider, that on September 22, 1942, Mr. Forster had subscribed and paid for his stock, regardless of whether or not the certificate had actually been issued to him? A. Supposedly he did.

Q. Supposedly he did?

A. Yes, as far as I knew.

Q. Then, on both of the dates here in question, both September 22, 1942, and October 14, 1942—those being the dates respectively of Defendants' A-68 and A-67,—Mr. Forster had subscribed and paid for six thousand shares of the capital stock of

(Testimony of Raymond J. Schneider.)

the Renton Ice and Ice Cream Company, did he not?

Mr. Keesling: If the Court please, if this is his witness, it is leading.

The Court: The last portion makes it leading, Counsel. Will you restate the question? [3363]

Mr. Cox: Yes, I will.

Q. (By Mr. Cox continuing): Mr. Schneider, had Mr. Forster subscribed and paid for his stock in the Renton Ice and Ice Cream Company to the best of your recollection prior to September 22, 1942? A. I thought so.

Mr. Cox: That is all.

Recross Examination

Q. (By Mr. Griffin): And did the Secretary-Treasurer, Mr. Hicks Taylor, take care of all those matters? A. Yes, sir.

Mr. Griffin: That is all.

Mr. Moriarty: No questions.

The Court: Mr. Schneider, if you will remain subject to call, it may be necessary for you to come back, if there is some further cross-examination. You expect to be in town, do you?

The Witness: Yes, in Renton.

The Court: When do you expect to have your other testimony, Mr. LeSourd?

Mr. LeSourd: It will probably be, I imagine, toward the end of the week, your Honor, or the first of next week. [3364]

(Testimony of Raymond J. Schneider.)

The Court: Then we wouldn't be in a position to act upon this matter for a day or two?

Mr. LeSourd: If your Honor wishes us to take that out of step, we have other testimony from the same witness, and we could call him at that time.

The Court: The matter is fresh in our minds now.

Mr. LeSourd: All right. Then, if you will step down now, we are through for this moment, at least.

(Witness excused.) [3365]

* * * * *

L. HICKS TAYLOR

upon being called as a witness for and on behalf of the Defendant Taylor, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. LeSourd): You are L. Hicks Taylor, one of the Defendants in this case?

A. I am.

Q. Where were you born, Mr. Taylor?

A. I am a native son of Seattle.

Q. What is your age?

A. I am 63 years of age.

Q. What is the fact as to whether you have lived in this community all of your life?

A. I have lived my entire life in Seattle.

Q. Are you married? A. I am.

Q. Where do you and your wife reside?

A. At 511 West Mercer Place, Seattle, Washington.

(Testimony of L. Hicks Taylor.)

Q. Mr. Taylor, what was the economic situation in your family when you were growing up?

A. It was necessary for me to support myself at a rather young age. [3494]

Q. At what time did you leave school? ..

A. I left school in my Sophomore year in High School.

Q. And did you go to work at that time?

A. I did.

Q. Did you complete your high school education?

A. Through night school, I obtained considerable more education.

Q. Did you ever get your high school diploma?

A. I did not.

Q. Did you take any accounting education?

A. Yes.

Q. What accounting education have you had?

A. I attended the University Extension three semesters under Professor McConaghey.

Q. Did you have any other accounting education?

A. I have an accounting degree from LaSalle University.

Q. Is that an attendance course or an extension course? A. It is an extension course.

Q. Mr. Taylor, when did you first go into practice for yourself in the bookkeeping or accounting field? A. In 1919. [3495]

Q. And what was the nature of your work at that time? A. Bookkeeping service.

(Testimony of L. Hicks Taylor.)

Q. Was that here in Seattle? A. Yes.

Q. When were you licensed as a public accountant? A. Early in 1934.

Q. And under what name have you practised public accounting?

A. L. Hicks Taylor and Company.

Q. At what location have you had your office?

A. At several locations.

Q. Are they all here in Seattle?

A. All downtown Seattle.

Q. Where was your office in the years involved in this case, 1945 through 1949?

A. In the Textile Tower, at Seventh and Olive Way.

Q. Since you were licensed as a public accountant, Mr. Taylor, to what extent have you devoted your time to your practice?

A. Continuously.

Q. Part-time or full time?

A. Full time. [3496]

Q. In your practice, have you developed any particular type of clientele? A. Yes.

Q. What type of clientele did you develop?

A. The greatest portion of my clientele are on a monthly fee basis.

Q. What was their nature with respect to whether they were a large business or a small business?

A. The greater portion of my practice was of the smaller type of business.

Q. What was their nature with respect to

(Testimony of L. Hicks Taylor.)

whether they were closely held businesses or widely held businesses?

A. In most cases, they were individual proprietorships, or small corporations with few stockholders.

Q. Would you give us, in general terms, the scope of work that you did during the years here involved, 1945 to 1949, for your typical clients?

A. In a majority of cases, we maintained the general ledger, installing what we call a balancing cash journal. It is a fairly informative book, and is completed by the bookkeeping force in the organization that you operate for. It is all completed and [3497] presented to our office, or to me, to keep in the general ledger.

Q. Now, in addition to the cash balancing journal that you mentioned, what type of bookkeeping records, if any, were set up for your ordinary type of client?

A. Most clients must have a sales register. They may have a check register or a combination cash journal which embodies a check register and cash receipts. Sales are generally handled through some type of a sales register, or maybe combined, associated and posted to this cash balancing journal.

Q. Were accounts payable records also set up?

A. Accounts payable records are kept by different ones in different ways.

Some pay from invoices and statements. Some maintain a book or an accounts payable journal, and post all their bills and items to that, and totals

(Testimony of L. Hicks Taylor.)

are taken from that to the balancing cash journal.

Many clients have an accounts payable journal column in the cash journal, and post all their statements and invoices directly to this cash journal and make their distribution there.

Q. To what extent, Mr. Taylor, in your practice, did you keep books of account yourself for clients other than the general ledger? [3498]

A. Not to any great extent. I have kept the entire records of some companies, but not large ones.

Q. To what extent did your client supply the figures to you for inclusion in the ledger?

A. In most cases, all the figures are furnished to us. We do not audit.

Q. You spoke of "you do not audit"; you mean, you never make an audit?

A. That is a little too broad. I have made a few audits in my practice, but it is not my regular practice. The time element of an audit many times takes anywhere from a week, sometimes two weeks. In our work of individual clients on a monthly basis, we do not have the time to take on an audit of any size.

Q. Now, in that connection, Mr. Taylor, have you ever referred to yourself as an auditor?

A. I am afraid that I have, in a general way, as an auditor and accountant.

Q. We have heard lots of testimony here in which sometimes the word "auditor" is used, and

(Testimony of L. Hicks Taylor.)

sometimes the word "accountant," but what is the fact as to the use of those two words, generally?

A. Well, it is a matter of statements sometimes that tie the two together. As a rule, we refer to ourselves as accountants, and not as auditors.

Q. But you have used both terms interchangeably? A. I have done that.

Q. Now, referring to Mr. Forster's enterprises in the years here in question, 1945 to 1949, did you make audits of those enterprises?

A. I did not.

Q. Have you been able, during the years of your practice, were you able to handle all of the accounting business you developed? A. I have not.

Q. Were other accountants associated with you?

A. I have had from one to four at different times.

Q. How about in the years 1945 to 1949?

A. I had three most of that period.

Q. Now, you mentioned clients on a monthly fee basis. To what extent was your practice devoted to that type of practice?

A. I would say in most cases it would be very limited, those that were not that way.

Q. Did you have clients for whom you merely prepared the income tax return?

A. Yes, a few. [3500]

Q. Now, referring to the years 1945 to 1949, did you receive retainers from monthly clients during that period? A. Yes.

Q. Approximately how many clients, Mr. Tay-

(Testimony of L. Hicks Taylor.)

lor, did you have in that period on a monthly retainer basis?

A. Probably from 20 to 30, probably.

Q. Now, during those same years—excuse me, you mean—do you mean by that that you would have that many at any one time? A. Yes.

Q. During those same years, what would be your estimate of the number of persons or corporations for whom you merely prepared the tax returns without being on a monthly basis?

A. It would not be very many, probably 20 or 25.

Q. Did the Second World War have any effect on your practice, Mr. Taylor?

A. A very noticeable effect.

Q. What was that effect?

A. Well, it practically kept me working all of my waking hours, the demands were so great.

Q. How long did this pressure of work continue? [3501] A. Until 1950.

Q. What hours did you work during this period?

A. Well, they were pretty long. I don't believe I could estimate. They were longer than an eight-hour day, very much.

Q. Do you belong to any professional organizations? A. Yes.

Q. What were they?

A. I was a member of the first Seattle Association of Public Accountants, and I believe, its Third President. Then they were converted into the Se-

(Testimony of L. Hicks Taylor.)

attle and Washington State Association of Licensed Public Accountants, and I held the presidency of the City Association twice, and with the Washington State Association twice.

Q. Mr. Taylor, when did you first meet Mr. Forster?

A. As I recollect, it was around 1928.

Q. What were the circumstances?

A. Mr. Peters had employed me to do some work on the Issaquah Creamery.

Q. And you met Mr. Forster at that time? Did you?

A. Through Mr. Peters, I met Mr. Forster, yes. [3502]

Q. When did you—when did you commence regular accounting work for Issaquah Creamery Company? A. I believe, in 1928.

Q. Did Mr. Forster thereafter acquire an interest?

A. Mr. Forster acquired 49 percent interest in the Issaquah Creamery Company, Incorporated, from Mr. Peters.

Q. Did Mr. Forster thereafter acquire a greater interest?

A. At a later date, as I recollect, it was 1931 or 1932, he signed a contract to purchase the balance of the shares from Mr. Peters.

Q. Now, speaking of that time, 1931 and 1932, what was the size of the Issaquah Creamery Company?

A. It was a very small organization.

(Testimony of L. Hicks Taylor.)

Q. Was Alpine Dairy Milk distribution a part of it at that time?

A. It did not come into existence until 1931 or '2.

Q. And when it came into existence, was it a separate organization, or was it a part of the Issaquah Creamery?

A. It was a retail distribution of the Issaquah Creamery Company. [3503]

Mr. LeSourd: Your Honor, I think it is time for recess.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions, and asks that you heed it on this occasion.

(Whereupon, the Jury retired from the Courtroom.) [3504]

* * * * *

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Q. (By Mr. LeSourd): Mr. Taylor, did you at some time start receiving compensation from Issaquah Creamery Company at the rate of $100 per month? A. Yes.

Q. About when was that?

A. To the best of my recollection, about 1935.

(Testimony of L. Hicks Taylor.)

Q. And did the Issaquah Creamery Company, from whom you received that compensation then include both the Issaquah Creamery Company and the Alpine Dairy business?

A. It included both, yes.

Q. To what extent did these businesses grow in the late 1930's?

A. My approximate recollection, to approximate one million to two million dollars a year in sales.

Q. There has been—you are testifying there as to the late '30s, prior to the '40s? [3512]

A. Yes.

Mr. Moriarty: I didn't get his answer.

Mr. LeSourd: One to two million.

Mr. Moriarty: Two or to that?

Q. (By Mr. LeSourd): It grew to that?

A. One to two million dollars, yes.

Q. There has been testimony here concerning a trip Mr. Forster took to Switzerland in 1939. Did he make any arrangements with you for the period while he was to be away? A. Yes, he did.

Q. What did you do during this period other than the duties you normally carried on?

A. At that time, I was the other party able to sign on the Issaquah Creamery bank account at the Washington State Bank. Mr. Forster did not desire to have someone else sign, and requested that I go to Issaquah and sign checks during that period.

Q. Did you make a trip to Issaquah?

A. I made trips two or three times a week.

(Testimony of L. Hicks Taylor.)

Q. Did you receive extra compensation for this service?

A. Yes, I received $300 when I returned.

Q. Who was in charge of the plant at Issaquah during [3513] this period?

A. My recollection is that it was Mr. Krumbah.

Q. And who was in charge of the office at Issaquah during this period? A. Mr. Erickson.

Q. Now, what, if any—there has been testimony concerning another trip to Switzerland by Mr. Forster in 1947. What, if any, arrangements did he make with you for extra services at that time?

A. None whatever.

Q. What, if anything, did you do at that time outside of your normal duties?

A. To the best of my memory, the jobbers at Alpine placed a little pressure on Mr. James Ross, who was the sales manager, and acting manager, and I believe we had one meeting relative to that during his trip.

Q. Did you perform any other duties during that period of time, outside of your normal duties?

A. Not to my recollection.

Q. Were you paid anything extra during this 1947 trip? A. I was not.

Q. Now, the testimony here, Mr. Taylor, shows that during the period here involved, 1945 through 1949, [3514] Alpine Dairy was a sole proprietorship of Mr. Forster. When was it split off from Issaquah Creamery Company? A. In 1940.

(Testimony of L. Hicks Taylor.)

Q. Under whose advice and direction was this split off accomplished?

A. To the best of my recollection, Mr. Beadon Hall had discussed it with Mr. Forster, relative to quite a definite change in the tax returns of a corporation. Mr. Hall's idea was to disincorporate the Issaquah Creamery——

Mr. Griffin: If the Court please, this is objected to as hearsay, unless this witness was present and so far, it is not disclosed, and I move the answer be stricken. If he was present at such a conversation, I have no objection.

Q. (By Mr. LeSourd): Mr. Taylor, confine yourself to not what other people have stated, but as to facts.

Under whose direction was this split off accomplished?

The Court: Are you asking that a portion be stricken?

Mr. Griffin: Yes.

The Court: Was any portion of your testimony with respect to what Mr. Beadon Hall said, [3515] was that made in your presence?

The Witness: That was made in my presence, yes.

The Court: Do you wish a time?

Mr. Griffin: It is still hearsay unless made in the presence of Mr. Forster. If it was, I have no objection.

Mr. LeSourd: Well——

(Testimony of L. Hicks Taylor.)

The Court: (Interposing) Do you wish to go into it?

Mr. LeSourd: No, we don't wish to go into it, your Honor..

The Court: Any portion of the answer that is hearsay, any statement made to this witness outside the presence of Mr. Forster, may be considered hearsay and stricken.

Q. (By Mr. LeSourd continuing): Mr. Taylor, can you tell us, if you know, any facts in your knowledge as to under whose advice and direction this split-off was accomplished?

A. The final and closing working over it was done by Mr. Harry Jones of Jones and Bronson, attorneys in the Colman Building.

Q. Did this split-off entail extra accounting work [3516] for you? A. It did.

Q. Did you perform that work?

A. I did.

Q. Did you receive extra compensation for it?

A. I did not.

Q. What effect, if any, did this split-off have on the amount of regular monthly work involved in the accounting for these businesses?

A. It increased my work, quite naturally.

Q. What effect did it have in the preparation of tax returns?

A. It required me to make additional tax returns. In the case of Alpine Dairy, it was necessary to make up the detailed statement for Mr. Forster's

(Testimony of L. Hicks Taylor.)

personal return besides making the corporate return.

Q. Did you at the time when these businesses were split off, have any discussions with Mr. Forster relative to compensation? A. I did.

Q. And what was said at that time?

A. I told Mr. Forster that I expected an increase, and that the detail of the ledger work was increased. [3517] Mr. Forster felt that Mr. Erickson could take on a bigger portion——

Mr. Griffin: (Interposing) Just a moment. I have no objection to the witness testifying as to what Mr. Forster said. As to what Mr. Forster felt is something different.

A. (Continuing) Mr. Forster said that Mr. Erickson could take over more of the duties, could take over the reconciliation of the bank account, the accounts payable control, the accounts receivable control, and could turn the journals over to me in a completed fashion, that I could post to the ledger and he did not care to increase my compensation.

Q. (By Mr. LeSourd): What fees did you receive thereafter from these businesses?

A. Just the same, only now divided, fifty dollars on each account.

Q. What fees did you receive from these businesses in the period 1945 to 1949?

A. The same amount.

Q. Did these businesses pay some of your ex-

(Testimony of L. Hicks Taylor.)

penses at the Washington Athletic Club in 1945 to 1949? A. I believe that they did. [3518]

Q. How much did that amount to?

A. In the four years, probably three or four hundred dollars.

Q. During this period 1945 to 1949, who was in charge of the books at Issaquah Creamery Company? A. Mr. Erickson.

Q. What assistance did he have?

A. As I recall, he had three people in the office with him.

Q. How often did you go out to Issaquah on accounting work for Issaquah Creamery Company and Alpine Dairy? A. Once a month.

Q. How long were you at Issaquah usually on these trips? A. The whole day.

Q. Did you stop by Issaquah Creamery Company at other times during the month?

A. It is possible that I have stopped by now and then, not often.

Q. How often would you think?

A. Well, probably once a month; maybe twice.

Q. What would be the nature of those visits?

A. Usually just passing of time of day or buying some ice cream or butter. [3519]

Q. Now, on the—then, insofar as actual accounting work, is it your testimony that you were there just once a month? A. Once a month, yes.

Q. Now, on these monthly visits, would you describe, Mr. Taylor, just exactly what you did?

A. The journals were always completed, and

(Testimony of L. Hicks Taylor.)

they were placed on a desk in the outer office, and I was in a position to start work right away. Mr. Erickson's work was always complete, and I would take the ledger and commence to post the journals that Mr. Erickson had completed.

Q. Now, just what information did you receive, and in what form did you receive it?

A. The journals were in balance, and Mr. Erickson would prepare me information slips on adding machine tapes, and various smaller paper which would be placed in the ledger for my use.

Q. Referring you to Defendants' Exhibit A-16, I will ask you what this is, with reference to your testimony, this last statement?

A. I am looking at Defendants' Exhibit A-16 which has the distribution of sundries, debit and credit, the distribution of the miscellaneous, or expense and purchase column, and an inventory as of [3520] August 31, 1948, for the Issaquah Creamery Company.

I am now looking at the distribution of the miscellaneous column, or the purchasing and expense column, and a sundries column of the Alpine Dairy.

This, combined with the footings across the journal were posted to my ledger to take off a trial balance.

Q. Now, handing you Plaintiff's Exhibit 249, the cash balancing journal of Alpine Dairy, opened at the last page of a series of sheets for August, 1946, I will ask you whether the footings on that page are the footings that you are referring to?

(Testimony of L. Hicks Taylor.)

A. That is correct.

Q. Would you hold those up so that the Jury can see them, Mr. Taylor?

(Whereupon, the witness complied with the request.)

Q. (Continuing) Now, there are some checkmarks above those footings. Would you tell us what those checkmarks are?

A. Those were my checkmarks when I posted the journal to the ledger.

Mr. Keesling: What was the date?

Mr. LeSourd: The last page for August, 1946, of [3521] the Alpine Dairy.

Mr. Moriarty: Nineteen——

Mr. LeSourd: (Interposing) August of 1946.

Q. (By Mr. LeSourd): Now, was this method of securing information from Mr. Erickson's journals the same for both Alpine and Issaquah Creamery? A. That is correct.

Q. What records did Mr. Erickson keep for Alpine Dairy?

A. The Alpine Dairy operating department was in Seattle.

Q. Yes, what records did Mr.——

A. (Interposing) Mr. Erickson retained—maintained the journal at Issaquah, which handled the accounts payable, the check register, the payroll accounts.

Q. Now, after entering these figures that you have secured from these tapes and journals in your general ledger, what did you do?

(Testimony of L. Hicks Taylor.)

A. I took off a trial balance on a work sheet.

Q. What is the nature of a trial balance?

A. That is the balancing figure taken from the debits and the credits from the ledger after the posting [3522] of these figures to the ledger.

Q. When you say "these figures," you are referring to——

A. (Interposing) I am referring to Exhibit A-16.

Q. And after getting up trial balances that would be a separate trial balance for each of these businesses? A. That is correct.

Q. What did you do then?

A. I prepared a profit and loss and a balance sheet on my work sheets.

Q. That would be the type of work sheets that had been introduced here in evidence?

A. That is correct.

Q. Now, you are still at Issaquah working. You are doing this at Issaquah?

A. That is correct.

Q. And when you prepared your work sheets with the profit and loss and balance sheet, what did you do with that?

A. Most times, when I was there, Mr. Forster would be there, and we would step into his private office and discuss the profit and loss statement for the period.

Q. Did you make any practice to go to Issaquah [3523] on any particular day of the week?

A. It was Mr. Forster's desire that I be there

(Testimony of L. Hicks Taylor.)

the day that he could be out there, usually on a Saturday or a Wednesday.

Q. Now, would you state what the nature of these figures that you received on the adding machine tapes, like A-16, and from the footings in the journal are with reference to whether they are total summary figures, or whether they are broken down and disclose all of the various business transactions of the company?

A. I am looking at Exhibit A-16. One of these adding machine tapes is postings, or the summary, from a sundries column in the journal. The debits read this way:

"Pay checks, $10,540.92; milk checks, $83,660.64; equipment, Ford truck, $4,558.56."

At the right of the column, it gives the account number; of the paychecks, 105; milk checks, 106; equipment, Ford truck, 109.

Q. Now, with regard to the other column, column of expenses, would you likewise indicate what the nature of those items are?

A. I am still reading from A-16, the expenses and miscellaneous column from the Issaquah Creamery journal. [3524]

Q. Yes, would you read some of those items, Mr. Taylor?

A. The expense accounts are all numbered. On No. 1 is milk. Would you like the amounts?

Q. Yes, please.

A. Milk, $128,426.53; No. 2 is Cream, $11,667.52;

(Testimony of L. Hicks Taylor.)

No. 3 is Butter, $31,409.55; Miscellaneous, No. 9, $64,263.91.

Q. I think that is enough.

Now, that No. 9, Miscellaneous, is that the account that has been testified here so much?

A. That is correct.

Q. And you got that in one figure as shown there?

A. It was one figure in the amount of $64,263.91.

Q. Now, when you discussed these tentative profit and loss figures from your work sheet with Mr. Forster on your visit to Issaquah, what, if any, familiarity did it appear to you that Mr. Forster and Mr. Erickson already had of the profit for the month?

Mr. Griffin: Object to the form of the question.

The Court: Objection sustained. [3525]

Q. (By Mr. LeSourd): Did you discuss these profit and loss figures with Mr. Forster and Mr. Erickson usually? A. Yes, we did.

Q. Did they exhibit at that time any familiarity with what the profit and loss figures might be?

Mr. Griffin: Object to the form of the question, and it is leading.

Mr. LeSourd: Just a moment, Mr. Taylor.

The Court: I think——

Mr. Griffin: (Interposing) It is calling for a conclusion.

The Court: I think it is objectionable in form, Mr. LeSourd.

Mr. LeSourd: Well, your Honor, my first ques-

(Testimony of L. Hicks Taylor.)

tion was not leading. What, if any, familiarity, they did exhibit, and I think that is perfectly proper.

Mr. Griffin: What was said.

Mr. LeSourd: All right, I will rephrase it again, your Honor.

Q. (By Mr. LeSourd): Mr. Forster—excuse me, Mr. Taylor, in these conferences with Mr. Forster, was anything said by Mr. Forster or Mr. Erickson which indicated to you that they had any familiarity already with what the profit should be for [3526] the month?

Mr. Keesling: I object to it as leading.

Mr. Griffin: I think the form of that question is objectionable. I have no objection to any question as to what was said, so far as Mr. Forster was concerned.

The Court: The first question here is, if anything was said.

Mr. LeSourd: That is right.

The Court: Objection overruled. "Yes" or "no," Mr. Taylor. A. Yes.

Q. (By Mr. LeSourd): And what was that?

Mr. Griffin: Just a moment. I am objecting to anything said by Mr. Erickson unless in the presence of Mr. Forster. I have no objection to anything he will testify as to what Mr. Forster said to Mr. Taylor.

The Court: If there is anything said here, and if both were not present, I take it it would be admitted only as to the one present?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Yes.

The Court: So that you may want to distinguish if there was anything said with one present, or otherwise? [3527]

Mr. LeSourd: Yes. May I ask a preliminary question to that?

Q. (By Mr. LeSourd continuing): In these conferences, monthly, we are speaking of, who was present? A. Mr. Forster and Mr. Erickson.

Q. Were they always both there?

A. Not always, no.

Q. What was the usual situation?

A. Usually, they both participated.

Q. Now, would you state if anything was said by these gentlemen, and indicate whether or not they were both present at such time, if you can recall any particular thing along that line?

A. The work sheet generally showed the profit accumulated for the period, and a deduction of the previous month's profit to show the profit for the month, and usually that was commented on during the session.

Q. Was there any statement which indicated that there was already a perception of what the profits would be?

Mr. Griffin: Objected to as leading. Object to the form of the question. It calls for a conclusion. The witness answered the specific question. [3528]

The Court: Objection sustained.

Q. (By Mr. LeSourd continuing): Was there anything in the bookkeeping system at Issaquah,

(Testimony of L. Hicks Taylor.)

Mr. Taylor, that would make it possible for a person to have worked out rough profit figures before you came out? A. Yes. They—that——

Q. (Interposing) What was it?

A. That is the purpose of the journal installed. The journal has a sales column, and, referring to A-16, the expense and miscellaneous and purchase columns, which can be applied to the sales, and then determine the difference. Then, if an inventory variance exists, it can be added or subtracted from that amount to determine the profit for that particular month.

Q. Well, is it in the nature of the cash balancing journal that this possibility exists?

A. Yes.

Q. Now, after your day at Issaquah, did you do anything further that month with regard to the financial statements of Alpine Dairy and Issaquah Creamery Company?

A. Yes, I took my ledger and work sheets to my office and re-checked them, and then prepared a typed profit and loss and balance sheet for both companies [3529] and mailed them to Mr. Forster.

Q. And, at the end of the year, did you perform any additional services?

A. The end of the year——

Q. (Interposing) With respect to tax returns?

A. Yes, I prepared the profit and loss statement and balance sheets for the tax returns, and prepared them at a later time.

Q. From what information, Mr. Taylor, did you

(Testimony of L. Hicks Taylor.)

prepare the Issaquah Creamery Company tax returns? A. From the general ledger.

Q. And from what information did you prepare the Alpine Dairy portion of Mr. Forster's tax returns? A. From the general ledger.

Q. Were you an officer of the Issaquah Creamery Company?

A. I was secretary, appointed by Mr. Peters, before Mr. Forster became associated with it.

Q. Did you receive any additional compensation for being an officer? A. I did not.

Q. Now, other than the accounting and preparation for the tax returns, did you perform other services for Mr. Forster or the Issaquah Creamery Company?

A. Yes, I was called on to perform various things, especially the income tax, capital stock tax, returns, [3530] excise tax returns, Department of Commerce reports, audits of insurance policies, audits of payroll records, audits of the Excise Division of the State Tax Commission, audits of the Internal Revenue, many interviews with people that Mr. Forster would send to my office, and interviews towards buying equipment for the offices, many times relative to his personal life insurance he would send people, and many others, and many telephone calls.

Q. Did you do anything in connection with the interview of applicants for bookkeeping employment at the Alpine Dairy office?

A. Yes, Mrs. Wilcox usually sent whoever she

(Testimony of L. Hicks Taylor.)

would like to employ to my office for an interview, and sometimes people would apply at my office, and I would in turn send them to Mrs. Wilcox for her approval.

Q. Did you perform any service for Mr. Forster in connection with acquisition of businesses and property? A. Yes, I did a number.

Q. How frequently and to what extent was that service?

A. Well, I do not recollect each year that these things took place, but to start with, the Puyallup Creamery. [3531]

Q. I wasn't asking for a detailed outline, just the general nature as to the type of work you did, and the frequency.

A. A good many times.

Q. What was the type of work you did in connection with those matters?

A. Usually Mr. Forster had made up his mind to purchase these enterprises, and then would have the records or financial statements and other things, and bring them or have them sent to my office to examine to get my opinion as to whether they were a good approach or not.

Q. In other words, by "good approach," what type of information are you talking about?

A. Relative to the relation of assets to liabilities, and he would generally give me the opinion as to the number of routes, or, if it was an ice cream plant, the production the plant had, and so forth.

(Testimony of L. Hicks Taylor.)

He would usually have all that information to present to me to make a comparison.

Q. Then, was your work in his acquisitions primarily concerned with figures?

A. That is correct.

Q. Did you have occasion to also take time in connection with the Peoples Bank? [3532]

A. Yes, once a year we prepared a complete financial statement of the operations of Mr. Forster's companies for the bank. They usually called for it, and I would prepare that for Mr. Forster.

Q. Are those the type of financial statements that have been introduced in evidence here in this case? A. Yes.

Q. Were those statements signed by you?

A. They were not.

Q. And do you know by whom they were signed, if at all?

A. Mr. Forster signed most of them, I believe.

Q. Did you have any reason for not signing them?

A. I was not the person obtaining loans, or having any banking connections with the bank, so that I felt it was not my responsibility in any way to sign the financial statements.

Q. Did you have any other reasons in connection with the type of work you were doing for these companies?

A. Yes. I did not perform an audit at any time and for that reason I did not feel like signing the reports, or certifying to them in any way.

(Testimony of L. Hicks Taylor.)

Q. Now, this work—extra work—other than the regular monthly accounting that you have testified to [3533] for Mr. Forster, were you—did you receive extra compensation for that?

A. I did not.

Q. How often, during these years that we are talking about, would you see Mr. Forster or talk to him on the telephone?

A. Oh, that would vary, according to the circumstances, but we were in touch with one another quite often during the month, either on the 'phone or at meetings in some occasions.

Q. Mr. Taylor, were you Mr. Forster's financial adviser?

A. That is a big subject, when you speak of a "financial adviser." A financial adviser must have all of the details of a man's cash, a man's assets, of all types. It is my belief that Mr. Forster's financial advisers were the bankers.

Q. Well, what sort of *advisers*, if any, did you give Mr. Forster?

A. He would bring me the books of the enterprises and I used to try to make a comparison as to his buying price as against the values that appeared in the statements.

Q. Did Mr. Forster have any income on his personal returns besides that of the business income of the [3534] Alpine Dairy Company?

A. Yes; usually dividends and interest.

Q. Well, in order to make out his income tax returns what did you do with regard to getting his

(Testimony of L. Hicks Taylor.)

other items of income from sources other than the Alpine Dairy business as such?

A. Well, when I completed the statement on Alpine I would usually request of Mr. Forster that he give me his interest and dividends so that I could include them on the tax returns.

Q. Did you maintain any personal books or records for Mr. Forster which included items of income other than the business records of the Alpine Dairy? A. No, I did not.

Q. Did you ever see any personal books or records of Mr. Forster with such items of income?

A. Not to my recollection.

Q. Now, in that connection there has been some testimony by Mr. Forster concerning Defendants' Exhibit A-61, which I now hand you; do you [3535] recall ever seeing that document?

I better change that.

Do you recall ever seeing it prior to seeing a photostat of it in preparation for this trial?

A. I have no recollection of it.

Q. Did Mr. Forster show you, regularly or irregularly, documents of this type listing his personal assets?

A. I haven't any recollection of it.

Q. Mr. Forster has testified that several times a year, while driving up to Conway, he showed you slips like this and talked them over; is that correct?

A. I can not recall.

Q. Did you know Mr. Forster had a savings account? A. Yes.

(Testimony of L. Hicks Taylor.)

Q. Did Mr. Forster ever give you the right to check into his bank account? A. He did not.

Q. What was Mr. Forster's attitude so far as you were concerned about his personal financial affairs?

Mr. Griffin: Object to the form of that question. [3536]

The Court: Objection sustained.

Q. (By Mr. LeSourd): What did Mr. Forster disclose to you with regard to his personal financial affairs?

A. Mr. Forster generally kept those as his own personal affair and I knew very little except on the Jordan account which, once a year, he would give me a record from Mr. Jordan's office.

Q. Did he advise you of the amounts which he had on deposit from time to time in his savings account? A. He did not.

Q. Did you know from any other source the amount on deposit?

A. No, I did not. I have no recollection of it.

Q. Do you have any recollection of amounts on deposit having been mentioned in conversations?

A. No, I don't have any recollection of it.

Q. Is it possible that such amounts could have been mentioned?

A. I would say it would be possible.

Q. Did you at any time, from any mention made of savings accounts, have any belief as to his receiving additional income above that with which you [3537] were acquainted? A. No.

(Testimony of L. Hicks Taylor.)

Q. Mr. Taylor, did you ever attempt to investigate to see that the information that Mr. Forster was giving you on dividends and interest for these returns was full and complete?

A. I did not.

Q. Why not?

A. I accepted the figures he presented to me as being correct.

Q. What information did he give you on dividends and interest for his returns?

A. As a rule in a lump sum.

Q. That is, a lump sum for——

A. (Interposing) ——of interest; a lump sum of interest and, as I recall, on the Jordan reports there were records of dividends.

Q. Did you get those Jordan reports?

A. I believe actually I had them.

Q. Do you know whether they came directly from Mr. Jordan or from Mr. Forster?

A. To the best of my recollection Mr. Forster gave them to me.

Q. Now, you say that the interest was usually in a lump sum? [3538] A. Yes.

Q. Did you put the information that he gave to you of his personal income on his returns?

A. Yes.

Q. Did you have any reason to believe that he was not giving you full information? A. No.

Q. Did Mr. Forster ever pay you for accounting work on his personal affairs as distinguished from

(Testimony of L. Hicks Taylor.)

the Alpine Dairy business for which you received fifty dollars a month? A. No.

Mr. LeSourd: I think this is a good place to stop, your Honor.

The Court: All right.

Members of the Jury:

We will now recess until tomorrow morning at ten o'clock. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

You may now be excused until ten o'clock tomorrow morning.

(Whereupon, the Jury retired from the court room.)

The Court: You may step down. [3539]

* * * * *

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Direct Examination—(Continued)

Q. (By Mr. LeSourd): Mr. Taylor, when we adjourned the other day we were discussing the manner in which you received information for Mr. Forster's personal return.

Now, just to get our minds back on the subject, what did you do at the end of each year in order to get information for Mr. Forster's return other than that appearing on the Alpine's books?

A. I would request of Mr. Forster all addi-

(Testimony of L. Hicks Taylor.)

tional income he had to place on the books, such as dividends, interest, and other items.

Q. What did you do with that information when you received it?

A. I usually made a memorandum of it. Usually there would be some dividends that did not appear on A. A. Jordan's report and sometimes he would give me one or two or maybe more items of interest that I would make a memorandum of to place on his [3550] tax returns.

Q. Now, were those items of interest separate items of interest for individual sources or were they in lump sums?

A. Usually there would be one, two, maybe three, items—or maybe more—of interest handed to me.

Q. And were they in connection with particular contracts, or other sources, or were they grouped in lump sums?

A. Well, they—the payment interest was usually grouped maybe in two items and other interest might be separately given to me.

Q. Was the—what was the nature of the interest figures given to you with—in connection with whether or not Mr. Forster was paying out any interest of his own on money he borrowed?

A. It was always my opinion that he was giving me net interest.

Q. What do you mean by "net interest"?

A. Well, interest received less amounts paid out.

Q. And during the years here involved were the

(Testimony of L. Hicks Taylor.)

figures for additional income which he gave you entered on his returns? [3551]

A. All that I had knowledge of, yes.

Q. The Government has introduced here, Mr. Taylor, Exhibit 279 which shows as income various items of personal income to Mr. Forster in addition to dividends and interest consisting of checks which were payable to Issaquah Creamery Company but which were deposited to Mr. Forster's savings account 198.

Now, handing you, as among those items, Plaintiff's Exhibit 142, which have been identified here as milk equalization checks from Apex Farms, what do you know about these checks?

A. Not having examined cancelled checks at the Apex Dairy, or Apex Farms, I would have no knowledge of these checks.

Q. Did Mr. Forster ever advise you that he was putting these in his savings account?

A. He did not.

Q. Did you know that any checks of this kind coming into Issaquah Creamery Company were not being recorded on the books of Issaquah Creamery Company? A. I did not.

Q. Did you know that any of these checks were going into account 198? A. I did not. [3552]

Q. Now, similarly, on Exhibit 279, are listed certain checks of Finstad and Utgard for gas, glucose, and other items. I hand you Plaintiff's Exhibit 150 consisting of checks so identified.

What did you know about those checks?

(Testimony of L. Hicks Taylor.)

A. It is possible, that I might have seen them in the books of Finstad and Utgard, but would have no knowledge of how they were being handled.

Q. You mean how they were being handled by Issaquah Creamery Company?

A. That is correct.

Q. Did Mr. Forster ever advise you that he was putting these checks in Account 198?

A. He did not.

Q. And what did you know, if anything, about how they were being handled on the books of Issaquah Creamery Company?

A. I had no knowledge of how they were being handled.

Q. Was it ever called to your attention in any way that they were not going on to the books at Issaquah Creamery Company? A. It was not.

Q. Now, similarly, on Exhibit 279 are certain checks payable to Issaquah Creamery Company for ice cream [3553] mix and such other items from Renton Ice and Ice Cream Company.

I hand you Plaintiff's Exhibit 200, and ask you what you knew about those checks, and also handing you Plaintiff's Exhibit 209 consisting further of a check from Renton Ice and Ice Cream Company to Issaquah Creamery Company, and ask you the same question about that?

A. A few of these checks appear to have my signature on them, and I knew that the Renton Ice and Ice Cream Company were doing business with the Issaquah Creamery Company, but as to

(Testimony of L. Hicks Taylor.)

how they were being handled, I would have no knowledge at Issaquah.

Q. Were these checks which were written by Renton Ice and Ice Cream Company to Issaquah proper checks for payment of bills, or what was their nature?

A. Yes, they are invoices attached here that show what they were in payment of so that they were regular bills by the company.

Q. What was your knowledge as to how they were being handled out at Issaquah, so far as the bookkeeping was concerned?

A. I had no knowledge of how they were being handled out there.

Q. Did Mr. Forster ever advise you that he was [3554] putting these in Account 198?

A. He did not.

Q. By the way, similarly, with regard to the checks of Finstad and Utgard and Apex Farms, which I showed you, do you know whether or not those were payments of proper business expenses?

A. They appeared to be, yes.

Q. Also listed in Plaintiff's Exhibit 279, as income to Mr. Forster, are certain proceeds of casein sales. I hand you, Mr. Taylor, Plaintiff's Exhibit 215 and 233 consisting of certain invoices on casein sales, and certain checks, and a check from Borden's, and ask you what, if anything, you knew about those transactions?

A. I had no knowledge of these transactions at

(Testimony of L. Hicks Taylor.)

all. They were never brought to my attention in any way.

Q. What, if anything, did you know about the casein that was, I believe, in the inventory there at Issaquah?

A. I have a remembrance of casein having been made at Issaquah, and it seems to me that there was something irregular or poor about it, and it was eliminated from the inventory.

Q. And what was brought to your attention after that with regard to this casein? [3555]

A. I didn't hear anything more about it after that.

Q. Did Mr. Forster ever advise you that these casein sale receipts were being put in 198?

A. No, he did not.

Q. Did you have any knowledge that such business receipts were not being recorded on the books of the company? A. I did not.

Q. Now, also listed in Plaintiff's Exhibit 279 as income to Mr. Forster are certain checks from the Arctic Gardens. I hand you Plaintiff's Exhibit 239, Exhibit 240 and Exhibits 253 and 254, and ask you what, if anything, you know about these checks?

A. I presume you knew that I handled all the operations of the Arctic Gardens as far as the bookkeeping was concerned, and all these checks are signed by me. Do you want me to say anything about separate checks?

Q. Well, what are the general nature of these checks?

(Testimony of L. Hicks Taylor.)

A. Well, there are two of them that paid a loan, and——

Q. Now, by "paid a loan", you mean what?

A. Mr. Forster loaned five thousand dollars during a period when we were short of money, and this is [3556] repayment of it.

Q. Were his loans to Arctic Gardens in excess of five thousand dollars?

A. Oh, yes, sir; this was a temporary loan.

Mr. Maxwell: To what exhibit are you referring?

Q. (By Mr LeSourd): What exhibit is that, Mr. Taylor? A. 239.

Q. And as to other checks in these exhibits?

A. Most of these checks appear to be just a payment for service of the drivers' delivery. In most cases, that is what it appears to be.

Q. That was for services of Issaquah Creamery Company for delivery expense incurred by Arctic Gardens?

A. Delivery of frozen foods, yes.

Q. What, if anything, did you know about the handling of these checks when they were received at Issaquah?

A. I had no information as to how they were being handled at Issaquah.

Q. Was it ever brought to your attention that they were not being recorded on the books of Issaquah Creamery Company?

A. It was not. [3557]

Q. (Continuing) As income?

Did Mr. Forster ever advise you that he was put-

(Testimony of L. Hicks Taylor.)

ting these checks in his personal savings account?

A. He did not.

Q. Now, also listed in Exhibit 279 are certain checks for sugar. I hand you Exhibits 234, 229, 230, which are—234, which are checks of Morrissey to Issaquah Creamery Company, 229 are from Holly Sugar Corporation, and 230 from Amalgammated Sugar Company, and ask you what, if anything, you knew about these checks?

A. I at no time ever saw or—saw these checks in any way.

Q. And did Mr. Forster ever advise you that he was receiving income from this source that was going into account 198? A. No, he did not.

Q. And were you ever advised in any way that income from this source was being received and not recorded on the books of Issaquah Creamery Company? A. I did not.

Q. Also listed are certain proceeds from sale of butter which are in Exhibit 279 as income and I hand you Plaintiff's Exhibit 235 which are checks from Stephenson and ask you what, if anything, [3558] you knew about those checks?

A. I never had any knowledge about these checks at all.

Q. Did Mr. Forster ever advise you that he was receiving this income and putting it in his savings account? A. He did not.

Q. And what, if any, knowledge did you have about whether they were—there was income of this

(Testimony of L. Hicks Taylor.)

sort not being recorded on the books of Issaquah Creamery Company?

A. I had no information of that.

Q. Also listed in Exhibit 279 are receipts from Consolidated Dairy Products Company, and I hand you Exhibits—Plaintiff's Exhibits 188, 189, 190, and 191, which are checks from Consolidated Dairy Products Company and ask you what, if any, knowledge you had concerning those checks?

A. I have no knowledge at all of the checks. I have never seen them.

Q. Did Mr. Forster ever advise you that he was receiving income from this source and not putting it in—and putting it in his savings account 198?

A. No, he did not.

Q. Were you ever advised that income from this [3559] source was not being recorded on the books of Issaquah Creamery Company?

A. I was not.

Q. Now, in general, Mr. Taylor, did Mr. Forster ever advise you as to any business receipts that he was putting them in his savings account 198?

A. He did not.

Q. Did you have any knowledge from any source that business receipts of Issaquah Creamery Company were not being recorded on the corporate books of that company?

A. I did not have any such information.

Q. We have had further testimony as to certain currency received by Mr. Forster from Time Oil

(Testimony of L. Hicks Taylor.)

Company, and that, likewise, was listed on Exhibit 279 as income to Mr. Forster.

Did Mr. Forster ever tell you that he was putting in his personal savings account any rebates from Time Oil Company?

A. He did not inform me of such.

Q. Did Mr. Forster—well, what did you know, if anything, about the Time Oil rebates, Mr. Taylor?

A. I had no knowledge of any rebates from the Time Oil Company.

Q. What, if any, knowledge did you have as to [3560] whether Mr. Forster was doing business with the Time Oil Company?

A. I have a recollection that Mr. Forster was quite pleased with a transaction with an Oil Company, giving him an additional rebate, but I don't remember whether it was Time Oil or Signal Oil, or someone else.

Q. Now, what was your information as to how rebates from any oil company were being handled as far as Issaquah Creamery Company was concerned?

Mr. Griffin: Object to the form of that question. Source of his information?

Mr. LeSourd: Well, information from any source, your Honor.

The Court: Would you restate the question, Mr. LeSourd?

Mr. LeSourd: Yes.

Q. (By Mr. LeSourd continuing): What information did you have from any source, Mr. Taylor, as

(Testimony of L. Hicks Taylor.)

to how rebates from oil companies were to be handled? Or did you have information from any source? A. I did not.

Q. How rebates from oil companies were to be handled? A. I did not. [3561]

Q. Did Mr. Forster ever give you any figures for the Time Oil rebates, either exact or estimates?

A. Not to my remembrance.

Q. Well, if he had given you such figures, would you remember them?

Mr. Griffin: Object to the form of that question.

The Court: Objection sustained.

Q. (By Mr. LeSourd continuing): Mr. Forster testified, I believe, that he talked to you several times a year about these rebates. What is your recollection as to this, Mr. Taylor?

A. I haven't any recollection of it.

Q. Can you recall any conversation with Mr. Forster about these rebates?

A. No, I do not have.

Q. Now, this same exhibit, Government's Exhibit 279, shows as income to Mr. Forster checks of Issaquah Creamery Company and Alpine Dairy which were used to pay personal expenses of Mr. Forster and were charged to business expenses on these corporate books, on the books of the businesses.

Now, when—when you examined or went out once a month to get the figures from these books for [3562] your monthly reports, did the information you received from the books and adding machine

(Testimony of L. Hicks Taylor.)

tapes bring to your attention that items of personal expense were included in business expense?

A. No, they did not.

Q. Did Mr. Erickson bring that fact to your attention at any time?

A. No, he did not.

Q. Did Mr. Forster ever advise you that items of personal expense were being charged as business expense? A. No, he did not.

Q. Now, Exhibit 279, likewise lists Alpine Dairy customer discount checks which were deposited in account 198.

What did you know about these discount checks?

A. I have a recollection that Mr. Bezeau discussed some discount checks that were undelivered, and requested what to do with them and I suggested that he return them to Mr. Erickson for cancellation.

Q. Why would they be returned to Mr. Erickson?

A. The only source of cancellation would be through Mr. Erickson's records.

Q. Where were they written in the first place?

A. At Issaquah.

Q. And how did they get into the possession of Alpine Dairy people in Seattle?

A. Mrs. Wilcox figured the discounts for the various customers over the City, made a list of them and sent them to Mr. Erickson, or Mr. Forster, at Issaquah, where the checks were written and—

(Testimony of L. Hicks Taylor.)

that is, the Alpine checks were returned to Alpine —for delivery to the various customers.

Q. Now, you say you advised Mr. Bezeau to return the undelivered ones to Issaquah to Mr. Erickson? A. Yes.

Q. Now, were you advised from any source that these checks, when returned to Issaquah, were not being taken up on the corporate books?

A. I was not.

Q. Were you advised from any source that these checks were not being redeposited in the corporate accounts or business bank accounts?

A. I was not.

Q. Did Mr. Forster ever advise you that he was putting these discount checks in Account 198?

A. He did not.

Q. Exhibit 279 also lists farm income of Mr. Forster. Did you know he had a farm? [3564]

A. Yes, I was aware he had a farm.

Q. Did you know that he was getting income from it during the years here in question?

A. No, I did not.

Q. Did Mr. Forster give you at any time amounts of farm income for inclusion in his returns? A. No, he did not.

Q. Now, Exhibit 279, Mr. Taylor, also lists as income to Mr. Forster, checks of Issaquah Creamery Company used to pay for construction of a barn on this farm and charged to business expense. Did you know that Mr. Forster built a barn?

(Testimony of L. Hicks Taylor.)

A. I knew it, yes, after it was built. I was invited to a barn dance up there.

Q. Did you go to the barn dance?

A. I am afraid I didn't attend.

Q. Did Mr. Forster ever tell you that the costs of this barn were being charged to business expenses by Issaquah Creamery Company?

A. No, he did not.

Q. Did you secure information from any source indicating that the costs of this barn were being charged to business expense?

A. No, I did not.

Q. Mr. Forster, I believe, has testified that as [3565] to various transactions that he entered into, that you told him what bank account to draw on in making payments; is that true?

A. I knew very little about his bank account.

Q. Well, did you or did you not tell him what bank account on which to write checks?

A. I did not.

Q. Exhibit 279 lists as income to Mr. Forster a check of Issaquah Creamery Company dated February 1, 1946, charged to business expense, but used to purchase stock of Apex Farms.

Did you know that this check had been written on Issaquah Creamery Company?

A. I did not.

Q. Did you know that such a check had been charged to business expense?

A. No, I did not.

Q. Exhibit 279 also lists as income to Mr. For-

(Testimony of L. Hicks Taylor.)

ster, checks received for the sale of equipment and deposited to his personal savings account 198.

What did you know about these checks?

A. I had no knowledge of them.

Q. Did Mr. Forster ever tell you he was depositing these checks to 198?

A. He did not. [3566]

Q. Did you have information from any source that such checks were not being recorded on the company books? A. No, I did not.

Q. 279 also lists various Alpine Dairy checks deposited to 198, including Northwest Basketball Tournament, Seattle School District No. 1, Community Chest, Milky Way, Incorporated.

What did you know about these checks?

A. I had no knowledge of them.

Q. Did Mr. Forster ever tell you that he put those in Account 198? A. No.

Q. Did you know in any other way that they were not being properly handled on the books?

A. No.

Q. Also, there is listed in the exhibit 279 a check of Puget Sound Products Company, but deposited to Account 198 and charged to Butter Expense.

What did you know about this check?

A. I had no knowledge of it.

Q. Did Mr. Forster ever tell you that he was putting this check in 198?

A. He did not.

Q. Did you ever know anything about the Puget Sound Products transaction? [3567]

(Testimony of L. Hicks Taylor.)

A. Is that—I have a question to ask.

Was Mr. Grill at one time in the Puget Sound products?

Q. Yes, that is the transaction.

A. If that is the transaction, I knew Mr. Forster had a dealing with Mr. Grill on Puget Sound Products, but that is as far as I knew about it.

Q. As far as this particular check is concerned, your testimony is as to your knowledge.

A. I had no knowledge of this particular check.

Q. Did you have information from any source that such a check had been charged to butter expense on the corporate books?

A. I did not.

Q. Now, 279 also lists as income to Mr. Forster some Alpine Dairy checks in 1949 to Cook and Grant which were deposited in Account 198. What knowledge did you have about these checks?

A. I had no knowledge of them.

Q. Did Mr. Forster ever tell you he was putting these in 198? A. No, he did not.

Q. And did you have any information at all that would indicate there were checks of this sort being improperly handled as far as the bookkeeping was [3568] concerned?

A. No, I had no knowledge of it.

Q. Now, in addition to the Arctic Gardens checks that I showed you, Mr. Taylor, there is another check listed on 279, a check of $773.21 from Arctic Gardens, which 279 lists as interest.

It may be among those that I handed to you. I

(Testimony of L. Hicks Taylor.)

am not sure. Were you familiar with that payment? A. Yes, I remember it.

Q. Would you explain the circumstances of that payment of $773.21?

A. When the Arctic Gardens was organized, or a few weeks after it, possibly, Mr. Brehm and Mr. Forster loaned the Company $3,500 each. On this particular date, Mr. Brehm and Mr. Forster came to my office, this date is December 31, 1945, and I am reading from Exhibit 239. They would like to have interest to pay the bank, so I wrote two checks for identically the same amount, one to Hans Forster and one to Mr. Brehm for $773.21. I do not know as to what Mr. Forster did, but Mr. Brehm was going right to the bank to pay the interest. I know that.

Q. Were these checks delivered in time to Mr. Forster?

A. They were delivered to him personally in my [3569] office.

Q. Now, were there—was such interest paid on these loans in any later years?

A. Later, the inventory was pledged to the bank. It is my recollection that the Arctic Gardens paid the interest to the bank after that time.

Q. Direct to the bank?

A. It is my opinion it was paid that way.

Q. Was that on the loans where the inventory, as you say, was pledged? A. Yes.

Mr. LeSourd: Excuse me a moment, your Honor.

Q. (By Mr. LeSourd): Handing you, Mr. Tay-

(Testimony of L. Hicks Taylor.)

lor, Plaintiff's Exhibit 257, which has been identified as your work sheet for Alpine Dairy, December 31, 1945, and I call your attention to some items marked "Dividend" and "Peoples Bank" near the bottom of the work sheet. Can you tell us what those are?

A. From my recollection of this, the dividend was from the Washington State Bank, and I note I have two items of interest. While they are not labelled "interest", they are labelled "Peoples Bank", one item of one thousand dollars, and apparently the Peoples Bank has been dittoed, $1,209.45. [3570]

Q. Where did those figures come from?

A. Mr. Forster gave them to me.

Q. Are these the notations that you spoke of you made at the end of the year?

A. Yes, upon this work sheet.

Mr. Obenour: What is the number of that again?

The Witness: Exhibit 257.

Q. (By Mr. LeSourd): What was your understanding——

Mr. LeSourd: Cancel that.

Q. (By Mr. LeSourd continuing): What was the relationship, if any, of this check of $773.21 interest, which we just mentioned, to these two figures that you have on this work sheet?

A. The figures here were, as I understand it, the net interest earning figures of Mr. Forster.

Q. And by "net", I think you already explained——

(Testimony of L. Hicks Taylor.)

A. (Interposing) It would mean the interest received less interest paid out.

Q. On your return that you filed for Mr. Forster, did you place any statement with regard to the source and extent of the information you used in making out the return? [3571]

A. Yes.

Q. In what form was this statement?

A. In the form of a rubber stamp under the—over the affidavit of the party preparing the return.

Q. To what extent, and in what circumstances are statements of this sort used in the accounting profession?

A. There are a great many accountants using the stamp, especially where an audit or a verification is not made.

Q. Now, what was the general nature of the statement on this rubber stamp put on these returns?

A. "Prepared from information furnished by the taxpayer without audit of the details contained therein".

Q. Now, passing, Mr. Taylor, from Exhibit 279 to Exhibit 280, which is the Government's statement of additional income of the Issaquah Creamery Company:

I will ask you about the items that aren't merely duplications of Exhibit 279 that we have already discussed. One item I would like to ask you about are receipts from the sale of ice cream, which, ap-

(Testimony of L. Hicks Taylor.)

parently, were thought to be over quota, but also, apparently, were not actually over quota.

Did you know that any receipts from the sales of ice cream were not being entered in the records of [3572] Issaquah Creamery Company as income?

A. I did not.

Q. Did you know that any such receipts were not being deposited in the Company bank account?

A. I did not.

Q. Now, also listed as additional sales of Issaquah Creamery Company on Exhibit 280 are sales of milk to Alpine Dairy, reduced, according to the Government's contention, $10,000 per month in 1948 and similar reductions in 1949.

What information do you have as to these transactions?

A. I don't know that I am clear,——

Q. (Interposing) These, Mr. Taylor, are the reductions in the price of milk being sold by Issaquah Creamery Company to Alpine Dairy in the years 1948 and 1949 that the Government contends constitutes a constructive dividend, or some such matter.

A. From my recollection, there was a price differential between Issaquah and Alpine, but as to these particular items, I was not familiar with the items themselves.

Q. What did you know about the pricing of milk being charged by Issaquah to Alpine?

A. I had no knowledge of it. I was not familiar [3573] with it in any way.

(Testimony of L. Hicks Taylor.)

Q. Did you have anything to do with it in the course of your work for these companies?

A. No.

Q. Did you know that any particular price adjustment had been made in these years between these two companies?

A. It did not come to my attention.

Q. Now, also listed on Exhibit 280 were certain year-end adjustments for 1949, and I refer particularly to Exhibit 280, item "C", 4, 5 and 6. I will read them to you, to refresh your recollection. Item C-4, purchases overstated by duplicating liabilities to Consolidated Dairy on the books of Issaquah Creamery Company on November 30, 1949, $51,-578.76; purchases overstated by recording a liability to R. L. Stephenson, paid in December, 1949, as a liability, on December 31, 1949, on Issaquah Creamery Company, corporation books, $18,859.50, and check of Issaquah Creamery Company, Incorporated, made payable to Puget Sound—that is a different item—and the third item is milk purchased from farmers, raised on the books of Issaquah Creamery Company, November and December, 1949, ten thousand dollars.

Now, will you tell us, Mr. Taylor, exactly [3574] what happened at the end of 1949 when you went to Issaquah to get your information for your year-end statement?

First, when did you go?

A. It was on the last Saturday of January in 1950.

(Testimony of L. Hicks Taylor.)

Q. Who was present at Issaquah Creamery Company when you were there?

A. Mr. Forster and Mr. Taylor.

Q. Now, would you describe to us exactly what happened on that day when you were there?

A. I performed my usual duties of posting the various journals and completed my figures in a tentative stage, and late in the afternoon, Mr. Forster and Mr. Erickson and I stepped into his private office, into Mr. Forster's private office, to discuss the profit figure for the year. To the best of my recollection, the profit figure was some $100,000 or $101,000 for the year of 1949. Mr. Forster looked at the figure, and he said, "That is impossible. Nobody has made any such money as that. It just isn't in the cards to make that much money."

I said, "Well, Mr. Forster, that is what my ledger shows. That is what it displays, and I don't think there is anything else we can do about it."

He says, "Well, there is a mistake there [3575] somewhere."

And I immediately said to Mr. Forster and to Mr. Erickson, "If you will check it over and let me know, I will hold the ledger open and not close it so that I can make the necessary adjustment if you find that I have made any errors or there are any errors in the journals. There are not any on the ledger that I can see at the present moment."

Q. Was anything said in that conversation about hiring another accountant?

(Testimony of L. Hicks Taylor.)

A. Mr. Forster said that he thought he would have some other accountant check it over.

Q. Now, what—how was the matter left between yourself and Mr. Forster and Mr. Erickson?

A. I told them that I would go back to Seattle and I would hold the work sheet until I heard from them as to any changes if they might find any errors.

Q. Handing you, Mr. Taylor, Plaintiff's Exhibit 259, I will ask you what that is?

A. This is the very work sheet that was discussed at that meeting on January of 1950.

Q. Now, there has been some testimony by Mr. Forster with regard to your giving him information on a substantial profit for the month of December, 1949. Would you state whether or not you gave Mr. Forster [3576] any figures for the month of December?

A. I haven't any recollection of discussing the month of December singly.

Q. Did you tell him that there was a profit in the month of December, or do you have any recollection of that matter?

A. I don't believe I mentioned any profit for December at all.

Q. Handing you Plaintiff's Exhibit 259-A, I will ask you what this is.

A. This is a similar work sheet of the Issaquah Creamery Company for the period January 1st to November 30, 1949.

(Testimony of L. Hicks Taylor.)

Q. What does that show as the profit up to the end of November?

A. It displays a net profit of $121,133.54.

Q. And what did you state the original figures were that you showed Mr. Forster for the year-end?

A. My recollection was it was $101,000.

Q. That would then show a loss for December, wouldn't it?

A. It would show a loss of twenty thousand odd dollars for the month of December.

Q. After this day at Issaquah at the end of January, 1950, what happened with regard to these adjustments? [3577]

A. I held the ledger and work sheets open until early in March. I cannot quote the date. I 'phoned Mr. Forster and asked him if I should proceed with the Issaquah Creamery Company as I had it, and he said "No, call Mr. Erickson." There were to be some changes.

I called Mr. Erickson and went to Issaquah and received the figures that I show on an adjustment column on this work sheet.

Q. Now, what figures are those in connection with the three items that I read to you from Exhibit 280, these items being a ten thousand dollar increase in milk purchases, a $51,578.76 increase in Consolidated Dairy for purchases, and $18,859.50 increase in purchases?

What figures were you given in connection with that matter?

A. I displayed two of these figures. I displayed

(Testimony of L. Hicks Taylor.)

the ten thousand dollars milk drafts, $51,578.76 increase in accounts payable.

Q. What about the $18,859.50 item?

Mr. Keesling: Would you indicate what you are referring to now?

Mr. LeSourd: Yes, the item——

Mr. Keesling: (Interposing) Previously.

The Witness: I am quoting from Plaintiff's [3578] Exhibit 259.

Q. (By Mr. LeSourd continuing): And in giving those figures, are those two figures you just gave us, do they appear on your work sheet?

A. They appear on this work sheet here, yes.

Mr. Maxwell: What is that, now?

Q. (By Mr. LeSourd): Is that Exhibit 259?

A. They appear on Exhibit 259.

Q. That is your work sheet for the year-end 1949? A. Correct.

Q. And when did you put those figures on the work sheet?

A. Sometime early in March, 1950.

Q. Again, how did you get those figures?

A. I went to Issaquah, and Mr. Erickson gave me these two figures.

Q. Now, the third figure listed on Exhibit 280 as an overstatement of purchases for the year 1949 is R. L. Stephenson of $18,859.50. What was your knowledge, if any, as to that item?

A. I never had any knowledge of the R. L. Stephenson figure. [3579]

(Testimony of L. Hicks Taylor.)

Q. Was there ever any change made in your work sheet on figures in such an amount?

A. I do not display it at all.

Q. Now, when you were given these figures and put them on your work sheet, what then did you do?

A. I recollect that I showed them to Mr. Erickson.

Q. Was there—were there other adjustments besides these which were given you at the time?

A. He called my attention to, I would say, an error——

Q. In another——

A. (Interposing) In another figure, yes.

Q. And then what happened?

A. And then I completed this, and, as I remember, I left a little tab with Mr. Erickson to give Mr. Forster, and to let me know if I should go ahead with the figures I had developed here.

Q. And what happened then?

A. I didn't hear anything more from them, so I proceeded and finished the income tax return.

Q. Now, these two items of increased liabilities that you have testified were given you, total $61,578.76, what—with the other adjustments which were made—what was the result of that in terms of the income for the year 1949? [3580]

A. The income for the year was reduced by the amount of $51,578.76.

Q. Were your suspicions aroused by this change, Mr. Taylor?

(Testimony of L. Hicks Taylor.)

A. No, Mr. Forster so thoroughly convinced me that there was an error, I compared it with the 1948 return and found that the sales were a little less in 1949 than they were in 1948 and I felt that it looked consistent and proceeded.

Q. How did the income arrived at in 1949 compare with 1948?

A. As I remember it, the income in 1948 was less than 1949, net income.

Q. Will you state whether or not you felt it was your responsibility to check into the accuracy of these changes?

A. No, I didn't feel that it was. It was near the deadline of preparing the returns, and I had confidence in Mr. Erickson, so I made no further effort to check them.

Mr. LeSourd: It is recess time, your Honor.

The Court: All right.

Ladies and Gentlemen of the Jury:

It is now time for the morning recess. The Court calls your attention to the admonition given you [3581] on similar occasions, and asks that you heed the admonition given on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:02 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:16 o'clock a.m. April 13, 1954, at which time, counsel and defendants heretofore

(Testimony of L. Hicks Taylor.)

noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): In the testimony in this case, Mr. Eppler said that Mr. Erickson had said that you had instructed Mr. Erickson to change his journals on liabilities at the end of 1949 to the extent of approximately eighty [3582] thousand dollars.

Did you give him any such instructions?

A. I did not.

Q. Did you instruct or advise him to make any changes whatsoever? A. I did not.

Q. Did you have any further discussion with Mr. Forster about this matter after you were out at Issaquah the first part of March and got these changes which you spoke of?

A. Yes, I called Mr. Forster to come to the office, to my office, in the Textile Tower to sign the tax return and notified him of the amount of the check necessary to accompany the return. I took the work sheet and showed Mr. Forster the changes,

(Testimony of L. Hicks Taylor.)

and I said, "I will change my ledger accordingly, and you and Harold will have to substantiate the changes that are made."

And I showed him the 1948 return and said, "They look very much in line."

Q. What, if anything, did he say?

A. He said, "That is O.K., we will take care of it."

Q. Was this at the time the return was signed?

A. It was at the time the return was signed and it was mailed, I believe, that same day.

Q. Did you put a statement on the returns for [3583] Issaquah Creamery Company concerning the source of your information and extent of it that you used to make out those returns?

A. Yes, I did.

Q. Was this statement similar to that put on Mr. Forster's individual return?

A. It is my remembrance that I used a little different stamp on a corporation. It read, "Prepared from the information—"; "Prepared from the books of the corporation without audit of the details".

Q. Turning, Mr. Taylor, to the Renton Ice and Ice Cream Company, what was your first contact with that operation?

A. My recollection is 1942.

Q. And would you explain how it came about that you were informed as to that matter?

A. Mr. Forster informed me that Mr. Baskett and Mr. Schneider had made some arrangements to

(Testimony of L. Hicks Taylor.)

purchase the Renton Ice and Ice Cream Company, and that he would—was going in with them, and that, if I recollect correctly, the first meeting I had was at Mr. Wettrick's office with Mr. Forster, Mr. Baskett, and Mr. Schneider, and Mrs. Baskett, by the way, was present.

Q. What happened there at that meeting?

A. That was an organization meeting. I might say [3584] there was considerable discussion before the organization meeting.

Mr. Tom Williams was not in favor of having Mr. Schneider or Mr. Forster connected with it. He wanted Mr. Baskett to have this business as his own so it was necessary that Mr. Forster, especially, not have his name identified in it for competitive reasons, and it was thought wise that I be the incorporator in place of Mr. Forster with the other two. The company was formed then, composed of Mr. Baskett subscribing his ten shares, and Mr. Schneider for ten, and L. H. Taylor for ten, and the corporation was then organized by Mr. Wettrick.

Q. What did you have to do in regard to Mr. Forster's negotiations in regard to putting money into the business?

A. I haven't any recollection of having anything to do with the financing in any way of it.

Q. Did you receive any stock?

A. It is my recollection that ten shares were issued in my name, and endorsed in blank back to

(Testimony of L. Hicks Taylor.)

Mr. Forster, endorsed in blank, not with Mr. Forster's name on them.

Q. What happened to the stock certificates?

A. They were turned over to Mr. Forster.

Q. And then you became, as you said, an incorporator. Did you also become a director?

A. Yes, they requested that I serve as a director, and the by-laws calling for the officers—they created the secretary-treasurer as one office and I was elected to that office.

Q. There has been testimony in this case, Mr. Taylor, concerning payments made by Schneider, Baskett, and later, Mrs. Baskett, or Mrs. Lovenger, to Mr. Forster, from their salaries.

What was your first contact with this matter?

A. It was in '42—1942—as to the date I am a little vague. We were in the Issaquah—or in the Renton Ice Cream office. Mr. Baskett, Mr. Schneider, Mr. Forster and myself.

Q. To refresh your recollection, was this the first meeting of the corporation?

A. It was the first meeting where salaries were established, and that, as I recollect, was in September, 1942.

Q. Is this the meeting of which we had the minutes in the minute book of the company?

A. That is my recollection.

Q. Now——

A. (Interposing) That—— [3586]

Q. (Continuing) What occurred at this meeting?

(Testimony of L. Hicks Taylor.)

A. Salaries were discussed at great length. Mr. Baskett and Mr. Schneider found that when they moved from Issaquah, that $50 a week in Renton didn't go nearly as far as it did in Issaquah, and they were very anxious to have a little more compensation, and there was considerable more discussion along that line, and finally it was determined that Mr. Forster did not care to become identified on account of the competitive reasons as mentioned before, and he did not want to draw a salary, so the salary of Mr. Schneider and Mr. Baskett were set at $500 a month. They were to draw it $50 a week, $2400 a year, and the balance of $3600 was to be divided two and one, Mr. Forster to receive one-third of each of their salaries as an income or an earning and it was agreed at that time that Mr. Forster would deposit his checks in the Alpine Dairy Bank Account, so that the income could be taken into account there.

Q. Did this all occur at this meeting?

A. That same meeting, yes.

Q. So it was understood at that meeting that——

Mr. Griffn: (Interposing) Objected to as leading.

Mr. LeSourd: Very well. [3587]

Q. (By Mr. LeSourd continuing): Now, why did —did you advise Mr. Forster to treat these items as salary on his income tax return?

A. That was the intent, to not have to report it on the face of his return as salary, like from the

(Testimony of L. Hicks Taylor.)

Issaquah Creamery Company, so that it would make him identified with the Renton Ice and Ice Cream Company at that time.

Q. Now, what part, if any, did you thereafter take in making out the salary checks?

A. It is my recollection that I made them out that year, the understanding being that—the understanding was that there would be two checks made to each, one check for two-thirds and one check for one-third. If I remember correctly, $3600 was the amount the first time, the checks for $1200 to be endorsed by Mr. Schneider and Mr. Baskett to Mr. Forster.

Q. By the way, going back to the meeting at which the salaries were fixed was Mr. Forster present at that meeting? A. Absolutely.

Q. Did you ever order or direct Mr. Schneider as to turning over to Mr. Forster funds from his salary? [3588]

A. I certainly did not.

Q. Did you prepare the income tax returns of Mr. Schneider and Mr. Baskett, and, later, Mrs. Baskett? A. I did.

Q. What was reported on their returns with regard to these salaries?

A. The entire salary drawn as it was voted in the By-laws, or in the minutes.

Q. Why was that done, Mr. Taylor?

A. Because the voted salary had to be reported by them as far as I was concerned.

(Testimony of L. Hicks Taylor.)

Q. Now, in connection with their returns, was the tax paid on the full salaries?

A. It was.

Q. How was this tax paid?

A. The first year's, the tax was paid separately, I believe. Then the withholding tax became in effect, and withholding was taken from the entire amount each year.

Q. And what about the reporting of this amount on the returns themselves; was tax paid in connection with the returns?

A. They each had sometimes additional income that would develop a larger tax and the withholding [3589] tax was deducted with the difference paid by Mr. Schneider and Mrs. Baskett.

Q. Now, in the years 1945 through 1949, what was the nature of your accounting services for Renton Ice and Ice Cream Company?

A. When Mr. Baskett passed away, because of the situation of having two signatures at the Renton Ice and Ice Cream——

Q. (Interposing): You are talking about the checking account now?

A. The bank account having two signatures, it was necessary for someone to go there during the week. I used to go out once or twice a week and sign checks with Mr. Schneider, and I handled many other things besides actual accounting work for the Renton Ice and Ice Cream Company, Rent Controls, and sometimes got a little bit into the

(Testimony of L. Hicks Taylor.)

labor picture, so that I spent time that wasn't always strictly accounting work.

Q. When did Mr. Baskett die?

A. My recollection is January of 1945.

Q. Now, in these years, 1945 to 1949, what was the nature of the strictly accounting work you did?

A. Well, it was running the general ledger.

Q. How often did you take the figures from the Renton Ice book for your general ledger? [3590]

A. Once a month.

Q. And was the type of operation similar to that at Issaquah inasmuch as getting figures?

A. Very much the same, yes.

Q. Did you get out monthly reports for Renton Ice and Ice Cream Company?

A. Yes, I prepared reports for Mr. Forster and Mr. Baskett and Mr. Schneider.

Q. Were copies sent to each? A. Yes.

Q. Now, what was your basic compensation at Renton Ice during these years?

A. Basic compensation was fifty dollars a month, and for the extra I received, some years, a six hundred dollar additional payment.

Q. Now, was this extra compensation you spoke of approved by anyone on behalf of the company?

A. It was approved by both Mr. Schneider and Mr. Forster.

Q. And what was Mr. Schneider's position with the company?

A. He was president of the company.

(Testimony of L. Hicks Taylor.)

Q. And who signed the checks that paid you this compensation?

A. Mr. Schneider, and I believe, I signed all [3591] the others with Mr. Schneider.

Q. You were countersigning a number of checks, were you? A. Yes.

Q. Mr. Taylor, there has been introduced here a so-called accounts payable ledger, or accounts payable journal, rather, which includes the years 1946 and 1947.

Mr. LeSourd: Would you get those, please?

(Whereupon, documents were handed to Mr. LeSourd by the Clerk.)

Q. (By Mr. LeSourd continuing): Now, referring to the—referring to the income tax return for Renton Ice and Ice Cream for the year ended July 31, 1946, which I hand you, as Plaintiff's Exhibit 26, and referring to the so-called accounts payable journal, being Plaintiff's Exhibit 212, and opened at the heading August 1, 1946, which I understand is for the month of July, 1946, I will ask you if you secured the figures for accounts payable which you used in your return from the itemization of accounts payable listed in that journal?

A. I did not.

Q. Well, how—first, why did you not use that journal in securing your accounts payable figures?

A. This book was not even half filled out, or one-third filled out at the time I was there. I took a journal sheet of paper and Mr. Schneider handed me the various invoices and statements and I sat

(Testimony of L. Hicks Taylor.)

down and wrote a schedule of accounts payable from the invoices and statements presented to me, and arrived at figures that I wrote right on this sheet here what they were composed of.

Q. Would you read those figures, Mr. Taylor?

A. Mix, $8,089.10; Beer, $4,387.25; Resale, which included Expense items as well, $1,861.70, making a total of $14,338.05.

Q. Now, I notice at the bottom of the detailed entries in that accounts payable journal is a total of $14,338.05. Is that in your writing?

A. That is in my handwriting, yes.

Q. Again referring to the bottom of the page, is that figure at the bottom of the page your handwriting? A. Yes.

Q. I am calling attention now to the total right at the foot of all the figures.

A. You mean right there?

Q. Yes.

A. That is the same total of $14,338.05.

Q. Is that in your writing? [3593]

A. That is in Mr. Schneider's handwriting.

Q. Now, was there any total there when you wrote your figures on that page?

A. There was not.

Q. Mr. Schneider, I believe, testified that he had written in a total there previous to your coming of $8,338.05 and you had him change it to $14,338.05. Is there any indication in that figure on that page that it has ever been changed?

(Testimony of L. Hicks Taylor.)

A. There isn't anything that shows it has been changed in any way.

Q. Now, referring to the next year, Mr. Taylor, for 1947, under the heading of August 1, 1947, in Plaintiff's Exhibit 212, which I understand is for the month of July, 1947, and also handing you the income tax return of Renton Ice for the year ended July 31, 1947, would you tell me what the amount is of accounts payable that you used in the income tax return for the year ended July 31, 1947; and will you give us the exhibit number of that return?

A. I am reading from Exhibit 27, the corporation income tax return of the Renton Ice and Ice Cream Company, a fiscal year, corporation operating from August 1, 1946, to July 31, 1947. I am turning to the last page, page 4, schedule "L", balance sheet. The [3594] balance sheets run up and down the sheet, and then, line 9, under Liabilities, the amount of $16,679.56 shows as accounts payable.

Q. Now, turning to the accounts payable journal, what is the total shown at the footing of the accounts payable journal for the month?

A. $18,277.36.

Q. Do you recall Mr. Schneider's testimony that he watched you total the pages for that month and put nine "1's" in front of various items in that journal? A. I heard that testimony.

Q. What is the fact as to whether you put nine "1's" in front of those totals?

(Testimony of L. Hicks Taylor.)

A. I absolutely did not put nine "1's" in front of those totals.

Q. And what is the fact as to whether or not you totalled those pages at all?

A. This book was just about one-third entered. It was skipped around here, an entry now and then. As I understood—no, this one is not the one. I take it back. I was thinking of the other one.

Q. The 1946 one?

A. Yes. This book I did not have in my possession at any time, as I remember it. [3595]

Q. You mean at the end of this July?

A. Yes, because if I had, I would have had some notes on the page showing that I had seen this book.

Q. Well, then, what is your testimony as to whether you ever totalled the columns for that July, 1947?

A. I did not total any columns in July, 1947.

Q. And the total of $18,253.11 appearing at the end of those figures, what is the fact as to whether or not that is in your handwriting?

A. That is not my handwriting.

Q. Is either total in your handwriting? There are two totals there, I believe.

A. Neither total is in my handwriting.

Q. Now, the figure you stated for accounts payable that you used on the return for that year was about 16,000-odd dollars, as I recall your reading it. Is there any combination of figures on the return itself which arrive at the same total as is written in this accounts payable journal?

(Testimony of L. Hicks Taylor.)

Do you need a pad of paper?

A. I have it already. By taking the accounts payable item as item 9 on schedule 27—Exhibit 27, of $16,679.56, and on line 11, there is an account called accrued expenses and typed in as taxes of $997.80, wages, [3596] which was my check for $600, added, make a total of $18,277.36, the same as the journal shows.

Q. The same as the last total in the journal?

A. That is correct.

Q. Now, does this accounts payable journal include any item of tax? A. It does not.

Q. Now, was there any source from which this total that appears—the final total that appears in that accounts payable journal could have been secured?

A. Two or three ways it could have. He might have taken it from my work sheet I had on the desk, could have taken it from the report I mailed to them, and he could have taken it off from this tax return.

Q. Now, the report that you mailed to them, what was the fact as to whether or not these three items that you have read add up to the same total as was in this journal and include the item of taxes —what is the fact as to whether those three items appear together in—might appear together in these reports?

A. They may have. I haven't definite recollection, but my recollection is I showed the total of

(Testimony of L. Hicks Taylor.)

$18,277.36 and I presume I put it on the forms that I sent to them.

Q. Now, turning, Mr. Taylor, to Finstad and [3597] Utgard. What was your first contact with Finstad and Utgard?

A. I believe in 1943. I am not positive.

Q. And what was the nature of that first contact?

A. The first contact was: Mr. Grant, Mr. Cook, Mr. Egeness were at Conway, I believe, and Mr. Forster picked me up, and we went to Conway and had a meeting there with the intention of picking up the books that were up there, but they were not ready for me at that time.

Q. What occurred thereafter?

A. It seems to me that the next month we went up there—it might be a shorter time than that—and Mr. Black, the accountant for them, had completed the books and we—I glanced through the trial balance that Mr. Black had made from the ledger.

Q. Who was in charge of the operating of the company up there?

A. Mr. Verne Egeness.

Q. Now, did Mr. Forster enter into an agreement with Mr. Egeness and Mr. Grant and Mr. Cook for the—in connection with the stock of that company?

A. Yes. Mr. Grant, Cook and Egeness made an arrangement to dispose of their interest to Mr. Forster. [3598]

(Testimony of L. Hicks Taylor.)

Q. And that is the agreement that is here in evidence, is it? A. Yes.

Q. Now, at any—at any time, did you have a discussion with anyone concerning payments to Mrs. Finstad? A. Yes.

Q. Would you explain when that was, and where?

Mr. Griffin: With whom?

Q. (By Mr. LeSourd continuing): And with whom?

A. To the best of my recollection, it was—it might have been—the same trip up there, or the next one, and those were made once a month, approximately the same part of the month. Mr. Forster and Mr. Egeness and I were present in the office, and a discussion was had relative to the operations generally, and a discussion was then had relative to Mr. Egeness' salary. My recollection of the discussion was this: That Mr. Egeness' salary would be set at $600 a month, to draw $300 in cash, and to pay $300 to Mrs. Finstad for an interest, and ten per cent of the profits.

Q. Who made the decision as to this salary?

A. Mr. Forster.

Q. Now, had you found anything in examining the books of Mr. Black with regard to the manner of payment [3599] to Mrs. Finstad prior to Mr. Forster's coming into the picture?

A. Yes, Mrs. Finstad was being paid from the salary accounts of Mr. Grant, Mr. Cook and Mr. Egeness.

(Testimony of L. Hicks Taylor.)

Q. In connection with this discussion you have just mentioned with regard to Mr. Egeness' salary, was there any statement as to the reason for Mr. Egeness continuing to make payments to Mrs. Finstad?

A. The general discussion was that Mr. Forster didn't feel that he had the funds and he would like to have Mr. Egeness become a part owner with him and to increase his interest in the Finstad and Utgard operation.

Q. Well, was that discussion with regard to Mr. Egeness becoming a part owner tied in in any way with the payments to Mrs. Finstad that were to be made to Mrs. Finstad?

A. Yes. I assumed from the conversation that it was to continue the—continue in his position purchasing 25 percent of the stock, and I so set up the ledger to take care of the entries for Mr. Egeness' salary account and payment to Mrs. Finstad, and that continued in the ledger until the time I left Seattle.

Q. Now, who made out the tax returns for Mr. [3600] Egeness? A. I did.

Q. What did his returns report as to the salary he received from the corporation?

A. He received the full salary of $600 a month.

Q. Was the tax paid on this whole salary?

A. The tax was paid on this whole salary by Mr. Egeness.

Q. Now, what was your understanding in the years 1945 through 1949 as to the stock of Finstad

(Testimony of L. Hicks Taylor.)

and Utgard, and in whose name it was held?

Mr. Griffin: Object to the form of that question. What difference is it what his understanding was? It has got to be based on conversations, agreement or facts, and the documents in evidence.

Mr. LeSourd: I am not asking for a legal conclusion. I am asking what he knew at the time.

Mr. Griffin: You didn't ask what he knew; for his understanding. I am objecting to the form of the question.

The Court: I think as you state it, the question is objectionable. If you are asking what he knew, it will be so considered.

Mr. LeSourd: Very well, your Honor. [3601]

Q. (By Mr. LeSourd continuing): Insofar as your knowledge went during these years, how was the stock of Finstad and Utgard held?

A. It was my understanding that it was held in the name of Mrs. Finstad.

Q. Now, Exhibit 252, Mr. Taylor, is a statement of net worth of Mr. Forster dated February 28, 1948, in your handwriting, and contains Finstad and Utgard, sole owner. In other words, showing Mr. Forster the sole owner of Finstad and Utgard. What was your reason for making that statement on that net worth statement?

The Court: What statement is that by exhibit number, Mr. LeSourd?

Mr. LeSourd: 252.

A. May I ask who the statement was made out to?

(Testimony of L. Hicks Taylor.)

Q. (By Mr. LeSourd): Well, let's get the statement. I hand you Plaintiff's Exhibit 252, and ask you if that is the net worth statement in your handwriting?

A. Yes. This is the—a statement made as of February 28, 1948, purporting to be the financial statement of Hans Forster. The reason for it is in the descriptive part. Finstad and Utgard net worth, sole [3602] owner, $74,699.46; but, on the bottom of the page, I have contingent liabilities, $190,000 which, as I recollect, included some amount that Mr. Egeness had paid to Mrs. Finstad.

Q. Did you have any knowledge during these years as to any legal rights that Mr. Egeness had with regard to stock interest in the company?

A. Only that as I understood it, none of the three parties who sold—who were selling to Mr. Forster were released from their legal thing with Mrs. Finstad.

Q. With regard to the securing of interest in the stock itself, what knowledge did you have, if any, as to the relationship of Mr. Egeness during these years? Maybe I don't make myself clear on that question.

Mr. LeSourd: I will withdraw the question.

Q. (By Mr. LeSourd continuing): Do you know when Mr. Forster actually received the stock of Finstad and Utgard?

A. I have to refer to this case to know. It was after I left the——

(Testimony of L. Hicks Taylor.)

Q. (Interposing): Other than what you have learned here in this case. [3603]

A. The records still show in the books that Mr. Egeness had paid the contract.

Q. Did you have anything to do with the release of the stock from escrow and delivery to Mr. Forster? A. I did not.

Q. Now, during the years 1945 to 1949, did it occur to you to enter in Mr. Forster's return the amounts which Mr. Egeness were paying to Mrs. Finstad? A. It certainly did not.

Q. Did you deem it to be income of Mr. Forster in any way? A. I certainly did not.

Q. Now, as I recall it, Mr. Taylor, Mr. Egeness testified that while he paid the tax to the Collector on his full $600 salary that Finstad and Utgard corporation reimbursed him for part of the tax. Was there any reimbursement to your knowledge?

A. Not to my knowledge.

Q. What did you do with Mr. Egeness' tax returns after you made it out?

A. I usually made them out in my office, and would mail them to him for his signature and for his payment.

Mr. LeSourd: Excuse me, a moment.

(Whereupon, there was a brief pause.)

Q. (By Mr. LeSourd): Plaintiff's Exhibit 149 contains two checks to Mrs. Finstad on February 28, 1950, one for $2500 and the other for $2,000. There has been some testimony which might indicate that the name of the payee on these checks

(Testimony of L. Hicks Taylor.)

was written by you. What is the fact as to that?

A. That is certainly not my handwriting.

Q. To what extent did you sign checks for Finstad and Utgard, or draw checks, rather; either one?

A. It is my recollection I never signed a check at Finstad but I believe that on one of the accounts, either they had two bank accounts, one at Stanwood and one at Mt. Vernon, and I believe my name was put on one of those, but I never signed a check as long as I was connected with them.

Q. At times, did you have occasion to draw checks or fill them out?

A. Oh, yes. If I was sitting at the desk, they would hand me something to write out, right along.

Q. Now, turning to Simonson and Forster, what did you do with regard to the incorporation of Simonson and Forster, if anything?

A. It is my recollection that that corporation [3605] organized for a very small amount of money. They did not care to hire an attorney to incorporate their company, but still they wanted to be incorporated.

So, they asked me if I couldn't handle it, and I said, "Well, I suppose I can copy your Issaquah Creamery articles and send them in, and just change the name." And that is what I did. I changed the names and wrote out the same articles as the Issaquah Creamery Company, and they were filed. I received no compensation for that.

Q. Now, what was the scope of your work for Simonson and Forster?

A. It was running the general ledger and the

(Testimony of L. Hicks Taylor.)

system out there had been partially this way by a former owner.

Q. Exhibit—the exhibits in evidence here, and the testimony shows the receipts by Mr. Forster of $100 a month.

Mr. LeSourd: Strike that, please.

Q. (By Mr. LeSourd continuing): There are two checks in evidence in this case for 1946 and 1947, a $100 check to Mr. Forster in 1946, and a $100 check to Mr. Forster in 1947. Do you have any recollection of those checks?

A. No, I do not. [3606]

Q. Now, also, there are checks in evidence here of $100 a month which Mr. Forster received in 1948, and $100 a month which he received in 1949. Do you have any recollection of those items?

A. Yes, very well.

Q. Now, will you state what happened with regard to those $100 a month items?

A. Those $100 a month items were charged on the books of the Puyallup Creamery into the general expense account. Then at the close of the year I spoke to Mr. Forster about the $1200 and asked him whether that was to be a salary or what it was supposed to be. His remarks to me were that it couldn't be a salary, because they were losing money, and that he didn't see why he should pay income tax when he was drawing from the capital of a business, and he says, "You talk it over with Oscar. I think that Oscar has arranged some way to take care of it."

(Testimony of L. Hicks Taylor.)

Q. Who is Oscar?

A. Mr. Simonson. I apologize. Mr. Oscar Simonson was the President of the Puyallup Creamery. I might explain that Puyallup Creamery and Simonson and Forster are one and the same thing if anybody is confused on it.

So, I talked to Mr. Simonson about it. [3607]

Mr. Griffin: Just a moment, if the Court please. Objected to as hearsay.

The Court: The conversation?

Mr. Griffin: Yes. Simonson is dead.

Q. (By Mr. LeSourd): Just state what you did with regard to this item?

The Court: You can't repeat a conversation, Mr. Taylor.

Mr. LeSourd: Yes.

A. The amount withdrawn was credited against the expense account, and the analysis handed me by Mr. Simonson showed that he had purchased some equipment, and it was already paid for, and not paid for through Simonson and Forster. I adjusted the records of Simonson and Forster. There was $1100.00 showing as already owing to the company by Mr. Simonson, and the $1200 that had been paid to Mr. Forster. I restored the $1200 to profit, and charged the equipment account with the $1200 and the $1100, and Mr. Forster was to pay Mr. Simonson this money back into the corporation.

Q. (By Mr. LeSourd): Was this done after your conversation with Mr. Simonson?

A. Yes. [3608]

(Testimony of L. Hicks Taylor.)

Q. Mr. Simonson has now passed away, has he?

A. Yes.

Q. I will hand you Plaintiff's Exhibit 226, and ask you what that is.

A. Plaintiff's Exhibit 226 is a December 31st balance sheet, and profit and loss statement of the Puyallup Creamery. Also a work sheet of the same company.

Q. For what period?

A. December 31, 1948.

Q. Now, does that work sheet—that is in your handwriting, is it?

A. That is in my handwriting, yes.

Q. Does that work sheet reflect these matters you have just testified to?

A. It does. The adjustment column shows an item of $1100 debited to equipment and credited to a notes receivable account. $1200 debited to equipment and $1200 shown as a credit against the expense control account.

Q. Now, has the work sheet—your work sheet for the year 1949 been produced here and located?

A. I have not seen it.

Q. What is your recollection as to what that work sheet would show if it were found with regard to [3609] the $1200 that was paid to Mr. Forster in 1929?

A. That it would show that it was restored to profit.

Q. And what would it show as the offsetting entry, or manner in which it was handled?

(Testimony of L. Hicks Taylor.)

A. It was my recollection that it was debited to equipment, also.

Q. Now, handing you Plaintiff's Exhibit 220, Mr. Taylor, would you state what that is?

What is the book that I handed you?

A. It is the ledger of the Puyallup Creamery Company, Simonson and Forster, Incorporated.

Q. Now, there are entries in that ledger with particular reference to the equipment account that reflects the transactions? A. Yes.

Q. And what are those entries?

A. There is an entry of December 31, 1948, of $3,722.16. That includes the $2300 I mentioned a bit ago.

Q. And what about the next year, at the end of 1949?

A. There is an entry of $1,553.69 which includes the $1200 of 1949 to Mr. Forster.

Q. And did you check to see if this equipment [3610] was actually received by Simonson and Forster?

A. I don't believe I did. I didn't often go out to the plant.

Q. Why didn't you check, Mr. Taylor?

A. If I remember rightly, Mr. Simonson had it written on a slip, what was purchased.

Q. Did you make any practice in your accounting where you were working on the basis that you are here, to actually check equipment or other physical items? A. I did not.

(Testimony of L. Hicks Taylor.)

Q. Did you report the $1200 a year on Mr. Forster's personal income tax return?

A. I did not.

Q. Why not?

A. Because it was restored to profit of the Puyallup Creamery, and became a liability of Mr. Forster, or he had to return the money to the Puyallup Creamery.

Q. By "liability", what do you mean?

A. His liability to return the money to the Puyallup Creamery.

Q. What about the equipment?

A. Well, the equipment — the equipment was supposedly paid for either by Mr. Forster or Mr. Simonson, and he was going to collect from Mr. Forster.

Q. Now, turning to Arctic Gardens, Mr. Taylor, [3611] was that a separate corporation?

A. Yes, it was.

Q. When was it organized?

A. To the best of my recollection, in 1945.

Q. And it was owned by whom?

A. Mr. Brehm and Mr. Forster.

Q. And what business was it in?

A. It was a frozen food business. I believe, from conversation that I have heard, that they were going to do more expansion for businesses than the frozen food, but for some reason, it didn't develop. I have forgotten the particulars of it.

Q. Now, what were your duties and activities in regard to this company?

(Testimony of L. Hicks Taylor.)

A. If I remember right, I was secretary. I might have been treasurer, if the By-laws called for it. I believe I was secretary-treasurer, yes.

Q. What were your actual duties and responsibilities and activities in connection with it?

A. When it first started, they turned over all the books to me in my office, and I maintained all the records in my office.

Q. Well, to what extent was your office used in the operation of the business itself?

A. In the early stages, Mr. Angstad was a [3612] sales manager for them and, I believe, on a commission basis, if I remember correctly, and he did the selling and maintaining a freezer truck—a cold whatever you call them, a truck to handle frozen foods—and operated for somewhere close to a year, I believe, and it seemed that the bottom fell out of the frozen food business, and Mr. Angstad was released, and then either the Alpine or the Issaquah Creamery Company took over the delivery of it, of the frozen foods, and then all the duties, pretty nearly to the selling of it, was in my hands, and I handled it through my office.

Q. What compensation did you receive from this company?

A. My recollection is that it averaged about fifty dollars a month throughout the period.

Q. When Mr. Forster was on the stand, he pointed out two checks you received from Arctic Gardens in May, 1949, one for $150 and one for $50.17. Would you explain what these were for?

(Testimony of L. Hicks Taylor.)

A. The $150 was, as I remember it, for three months' compensation, and the $50 was the last month's compensation. The $.17, if I had of left it in the bank account, the bank would have taken it anyway, so that I just wrote the seventeen cents on my check and closed the account. [3613]

Q. How did it happen you didn't send the seventeen cents out to Mr. Forster?

A. Well, it would have cost me six cents to mail the seventeen cents to the two people, so——

Q. (Interposing): When was it that——

Mr. LeSourd: Strike that. It is time to recess, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now recess for noon. The Court calls your attention to the admonition given on similar occasions, and asks that you heed that admonition on this occasion. You will now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

The Court: Court will recess until 1:45.

(Whereupon, at 12:16 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:45 o'clock p.m. April 13, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the Courtroom.)

The Court: You may be seated.

(Testimony of L. Hicks Taylor.)

It is stipulated that the Jury and all Defendants are present in the court room? [3614]

Mr. Griffin: Yes, your Honor.

Mr. LeSourd: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): When we adjourned at noon, Mr. Taylor, we were discussing Arctic Gardens and you have mentioned in your testimony the fact that in the later years of Arctic Gardens, it borrowed money directly from the bank, or secured loans. Did that involve any work on your part with those loans?

A. Yes, I had to sign warehouse receipts, and sign them over to the bank, and every time we released merchandise, the warehouse would notify the bank, and I had to remit or go to the bank and clear the merchandise of the trust receipts. There were trust receipts that entered into it, and I had to release the trust receipts, and it required quite a number of trips to the bank.

Q. In 1949, Arctic Gardens, as I understand it, changed its name to Alpine Ice Cream Company, and acquired the Alpine Ice Cream business. Did you at that time have any discussion with Mr. Forster as to compensation?

A. Yes, I asked him if it would not be possible [3615] to continue the same compensation on into the Alpine Ice Cream Company and he approved it.

Q. On one of the returns for Arctic Gardens

(Testimony of L. Hicks Taylor.)

that has been introduced here, it bears this rubber stamp of yours:

"Prepared from the books without audit." or something to that effect.

Would you explain how that came about?

A. It is my opinion that I had many returns on the desk and reached over and stamped it and signed it without realizing that it was a return I was the principal of.

Q. How many returns would you prepare each year for various clients altogether?

A. Oh, I would probably have 20 or 30 at one time that I would be working on, the conclusions on.

Q. What is the fact as to whether or not those returns in general were prepared from information submitted to you? A. That is correct.

Q. They were generally so prepared?

A. Yes.

Q. Now, there has been testimony in this case with regard to Apex Farms. What was your relationship—first, was that [3616] a separate corporation? A. That was, yes.

Q. What was your relationship to that corporation?

A. I believe I was acting secretary and treasurer of that corporation also, and was—while the original idea was that I would handle the ledger out there, but Mr. Keck was doing a masterful job, and I couldn't see any reason for interrupting a good thing, so I worked with him, and he handled

(Testimony of L. Hicks Taylor.)

all of the mechanics of the business out there, after the consolidation.

You see, there was consolidation of the Blue Ribbon Dairy and Apex Dairy under the name of the Apex Farms, and it required quite a little accounting to consolidate the two under the one set of books.

Q. Did you receive any extra compensation for that consolidation?

A. No, I just received the regular fifty dollars a month out there.

Q. That was your compensation from Apex?

A. Yes, fifty dollars a month.

Q. I think Mr. Keck recalled it was sixty dollars a month, but that was not correct?

A. That is not so. Fifty dollars was the fee.

Q. To what extent did you participate in making out of the income tax returns for Apex Farms?

A. Mr. Keck, as a rule, completed the returns but I would go in and check them back with him, and check them over. We had one period that was audited by the Department, and they made a number of changes that had to be reflected in the returns, and my memory is that on that return, after working with Mr. Keck, that I signed the return as having prepared it and put my stamp on it.

Q. Is that the one testified to here earlier in this case? A. Yes.

Q. Turning now to Daisy Ice Cream: where was the Daisy Ice Cream Company, or store, located?

(Testimony of L. Hicks Taylor.)

A. It was on Florentia Street down near the Fremont Bridge.

Q. Was that a separate corporation?

A. The Daisy Ice Cream Company was an individual operation operated by Mr. F. L. Morris.

Q. And was it Mr. Morris that Mr. Forster acquired it from? A. That is correct.

Q. Do you recall approximately when Mr. Forster acquired it? [3618]

A. I believe in 1945, but I wouldn't say for certain on that. It kind of slipped my mind.

Q. It might have been '33—or, '4?

A. No, I don't think so.

Q. Irrespective of dates, had you been performing any service for Mr. Morris prior to the time Mr. Forster acquired the business?

A. Yes, I was keeping profit and loss and kept his general ledger.

Q. You were doing his accounting for him?

A. Yes.

Q. What did you do, if anything, in connection with the taking over of this business by Mr. Forster?

A. As I recollect it, I performed most of the operation of being taken over. There was some cash consideration, and a note given for the balance of the sale, and I believe that I performed all of the functions of that.

Q. You did all of the accounting work in that connection, did you?

A. Well, the accounting work, I did it; helped

(Testimony of L. Hicks Taylor.)

finish the sale for Mr. Morris and Mr. Forster.

Q. Now, when Mr. Forster took over, did he bring in Mr. Riig, who testified here earlier in this case?

A. Mr. Riig was the ice cream maker. Mr. Riig [3619] was the ice cream maker at the Daisy.

Q. Previously, was he there?

A. Whether he worked for Mr. Morris, I will not say for certain, but he was the ice cream maker that Mr. Forster hired there, I am sure.

Q. Now, was there any—was there a conversation between yourself and Mr. Forster and Mr. Riig at the Daisy store, shortly after Mr. Forster took over? A. Yes.

Q. What happened? What was said, and what happened?

A. Well, Mr. Forster had me pick up a book of deposit slips at the bank and, if I remember right, Harold Erickson sent in a daily cash report, a group of them, and Mr. Forster and I went to the Daisy plant, and I showed Mr. Riig how to make out a deposit, and how to make out these daily sheets.

Q. Now, at the time was there anything said as to what Mr. Riig was to do with the daily sheets?

A. The instructions was he was to fill out the deposit slips and send them in to the Peoples Bank, and the daily sheets were to be completed and mailed to Issaquah.

Q. Who gave those instructions?

A. Mr. Forster. [3620]

(Testimony of L. Hicks Taylor.)

Q. Did you have any conversation with Mr. Forster at the time he took over this Daisy Ice Cream Company as to the conduct of the future accounting work for this operation?

A. Yes, I asked him if he would like to have me continue on it, and he said he thought it would be a little easier to handle it at Issaquah, and have Mr. Erickson handle it down there.

Q. What connection, if any, did you have with the accounting matters of the Daisy at that time?

A. I had none.

Q. Did you receive any fee from the Daisy or for acting for the Daisy operation after that time?

A. I did not.

Q. Did Mr. Forster, after taking over that Daisy operation, ever ask you for a report on it?

A. Not to my recollection.

Q. Did you ever make out a report on that Daisy operation? A. I did not.

Q. Did you receive copies of Mr. Riig's report that you say was sent to Issaquah? A. No.

Q. What visit did you make after that time to the Daisy plant? [3621]

A. I had occasion to drop by there two or three times. I bought some ice cream, and our offices doing the work of the Daisy Dairy Store, a corner store, in the building, and it is my recollection that I went by and picked up some of their work a couple of times and stopped in and passed the time of day with Mr. Riig.

(Testimony of L. Hicks Taylor.)

Q. Did you ever go over Mr. Riig's records at any time after Mr. Forster took over?

A. No, I did not.

Q. Either with Mr. Forster present, or in his absence? A. No, I did not.

Q. From time to time, you testified, that you were an officer or secretary or treasurer, or both, of these various corporations. How did it happen that you became an officer of these corporations?

A. I believe usually to please Mr. Forster to fill out the staff of his organization, qualifying shares, and just to furnish signed papers, if necessary, as a secretary.

Q. Did you have any financial interest in any of these companies? A. I did not.

Q. Were you paid anything extra above your [3622] accounting fees for being an officer of these companies? A. No, I was not.

Q. Now, there was some testimony with regard to Taylor Brothers Insurance Company. Did you have any insurance business in the years here in question?

A. I own no interest in an insurance business. My brother had operated an insurance business.

Q. That was your brother Jack Taylor?

A. Jack Taylor, yes.

Q. And did you receive any part of the insurance premiums that he earned?

A. I did not.

Q. Mr. Taylor, what was the compensation that you received in the years 1945 through 1949 from

(Testimony of L. Hicks Taylor.)

all of the companies, businesses, that Mr. Forster was interested in—average?

A. I believe I figured it up. It is slightly over $50 a month.

Q. Does that include the few hundred dollars that was paid on your Washington Athletic Club bill? A. Yes, that includes everything.

Q. That is fifty dollars per month per business, per company? A. Yes.

Q. Would you state what the facts are with [3623] regard to the adequacy of your compensation paid to you during these years by these companies, taken as a group?

A. Well, they—taking an average, the pay was probably a little on the low side of being adequate, but it was all right, as far as I was concerned.

Q. Was it—did the adequacy of this compensation vary for the different companies, taking them individually?

A. Yes. Some required more time than others to place an average on them all.

Q. Now, would you have warranted the prevailing standards of fees during this period in doing further extensive work for these companies for the fees you were receiving?

A. No, I would not. There was not sufficient for that.

Q. Mr. Taylor, was Mr. George Kachlein ever your attorney? A. Yes, he was.

Q. When did he first become your attorney?

A. 1948.

(Testimony of L. Hicks Taylor.)

Q. And in what connection?

A. Income tax examination. [3624]

Q. Did you ever give Mr. Kachlein any authorization to represent you before the Bureau of Internal Revenue?

A. Yes, I gave him a power of attorney to represent me before the Treasury Department.

Q. During what period was this power of attorney in effect?

A. From some time in 1948 through 19—October, 1950.

Q. Did Mr. Kachlein thereafter become an attorney for Mr. Forster? A. Yes.

Q. When was he first employed as an attorney for Mr. Forster, so far as you know?

A. The best of my recollection I turned over the minute books of the Finstad and Utgard Company in September or October of 1949.

Q. What developed, Mr. Taylor, from the investigation of your own personal returns by the Treasury Department?

A. I was—I pleaded guilty to one count of tax evasion.

Q. Well, what developed first in that investigation? When that—when did you say that investigation started? [3625]

A. In August, 1948.

Q. And after it started did you check your own returns? A. I did.

Q. What did you find?

(Testimony of L. Hicks Taylor.)

A. I found that I was short in my reporting and called Mr. Kachlein for advice.

Q. What position did you take as to your shortage?

A. I took the position that it was not intentional, it was a carelessness, and that I did not feel that I had committed any fraud intentionally.

Q. You say that charges were filed; were they against you?

A. I don't know whether—when you refer to it as charges being filed——

Q. (Interposing): There was a complaint, or indictment, or information against you, was there, filed as an outgrowth of this investigation?

A. On March 2nd, 1950, Mr. Kachlein took me to Tacoma and apparently the charge was there to be offered to the Grand Jury, I believe. That is the way I understand it.

Mr. Obenour: If the Court please, we object to this testimony. The testimony that might [3626] be given, I believe, would follow strictly on the line of any conviction without details as to the manner in which it was handled.

Mr. LeSourd: Well, I wasn't trying to get the details, your Honor, but to lead up to this matter and I will withdraw that question, Mr. Obenour.

Q. (By Mr. LeSourd): Now, did you receive any advice from Mr. Kachlein as to how you should plead in your own case? A. Yes, on——

Mr. Obenour: That is objected to, if the Court please. It is strictly the matter of the prior record.

(Testimony of L. Hicks Taylor.)

The Court: I take it this is not in connection with the record particularly.

Mr. LeSourd: Oh, no, your Honor. We are not attempting to go into the prior matter except to give a general background of these events, is all.

Mr. Obenour: We withdraw the objection then.

A. (Continuing): On March 2nd when we went to Tacoma Mr. Kachlein advised me to plead guilty on one count. [3627]

Q. (By Mr. LeSourd): And what happened then in Tacoma?

A. I pleaded guilty to one count and was given a few days to come before the judge for sentence.

Q. And when did that occur; when did you come before the judge?

A. I was sentenced on May—on April 25, 1950.

Q. Did you commence serving your sentence at that time? A. Immediately, yes.

Q. And by "immediately", you mean that very day? A. That very day.

Q. When were you released finally?

A. I was released September 10, 1950.

Q. Mr. Taylor, do you recall the testimony of Mr. Marx in this case that on April 26, 1950, the day after you went to McNeil, Mr. Kachlein stated to Mr. Marx that if there were errors in Mr. Forster's returns they were undoubtedly due to your sloppy accounting?

A. I remember it very well.

Q. Did Mr. Kachlein advise you before you went to McNeil, or while you were there, that he [3628]

(Testimony of L. Hicks Taylor.)

was taking a position on behalf of Mr. Forster that was adverse to you? A. He did not.

Q. Did he advise you, either before you went to McNeil or while you were there, that there was any conflict between his representation of Mr. Forster and his representation of you?

A. He did not.

Mr. Obenour: If the Court please, we object to leading examination on this matter on the basis it would not be material to the matter here in issue.

The Court: I think the Court already ruled on that matter and would overrule the objection.

Mr. Griffin: That is the reason I remained silent. Your Honor ruled on this matter and I understood we disposed of it heretofore.

Mr. LeSourd: That was my understanding.

The Court: Yes, you may proceed.

Mr. LeSourd: Was my last question answered, your Honor?

The Court: I might advise the Jury in this connection so that you will understand: [3629]

Examination on this line was suggested earlier and there was some indication of objection and the Court considered the matter and advised counsel that examination into this very subject matter might be permitted and that if there was any special objection, of course, counsel may make it as to form of question.

Mr. Griffin: I assume our general exceptions to your Honor's rulings were reserved at that time?

The Court: Yes, whatever the record shows.

(Testimony of L. Hicks Taylor.)

You may proceed.

Now, Mr. Reporter, you may read the answer.

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. LeSourd): The period that you were at McNeil Island, Mr. Taylor, did Mr. Kachlein continue to perform legal services for you?

A. Yes, he did.

Q. What were the nature of these services; what was the nature of these services?

A. He filed a protest with the Treasury [3630] Department on my tax liability sometime, I believe, in May of 1950.

Q. And did the—well, now, speaking of that tax matter, was that your civil tax liability you are talking about? A. Yes.

Q. Was Mr. Kachlein still handling this matter for you when you returned to Seattle September 10, 1950? A. Yes.

Q. How long did he continue to handle it?

A. Until October 27, 1950.

Q. Did he prepare other legal services for you while you were at McNeil Island?

A. Yes, he prepared a codicil to a will.

Q. And when did you sign that?

A. I believe that was in June of 1950.

Q. After returning from McNeil Island did you then find anything else with regard to steps taken by Mr. Kachlein as your representative while you were away? A. Yes.

Mr. LeSourd: Will you mark this?

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-74 marked for identification. [3631]

(Defendants' Exhibit A-74 marked for identification.)

Q. (By Mr. LeSourd): Handing you Defendants' Exhibit A-74, for identification, can you state what that is?

A. This is a memorandum for file given to Mr. Benedict and Mr. Slater, two men doing accounting work in my office. It is dated June 28, 1950.

Q. How did you receive it?

A. It was turned over to me by Mr. Slater, if I remember correctly.

Q. It bears whose signature, Mr. Taylor, or what initials?

A. It bears the initials of G. F. K.

Mr. Obenour: We object, if the Court please, as not properly identified.

The Court: I will look at it when Counsel have finished.

Mr. Griffin: Subject to the general objection to this line of testimony I have no objection to this exhibit and I am willing to stipulate this is a—that G. F. K. is George F. Kachlein—memorandum to Mr. Taylor's office.

Mr. Obenour: We will withdraw objection.

Mr. LeSourd: I will offer it, your [3632] Honor.

The Court: There is no objection then?

Mr. Griffin: No objection.

Mr. Keesling: No objection.

The Court: A-74 is admitted.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-74 admitted in evidence.)

Mr. LeSourd: May I read it?

The Court: When I say "no objection," that is no specific objection.

Mr. Griffin: No, your Honor.

Mr. LeSourd: May I read it?

The Court: You may read it.

Mr. LeSourd: "Memorandum for File.

"Re: L. Hicks Taylor.

"Mr. Benedict and Mr. Slater . . ."

Q. (By Mr. LeSourd): By the way, who are Mr. Benedict and Mr. Slater?

A. They were men associated with me in my office in the accounting business.

Mr. LeSourd: "Mr. Benedict and Mr. Slater contacted me Wednesday afternoon, June 28, with respect to the question as to whether or not collections made for work performed subsequent to May 1, [3633] 1950, should be divided two-thirds to the accountant and one-third to Hicks Taylor.

"As a temporary arrangement pending Mr. Taylor's return, it was agreed that collections on all accounts for services rendered subsequent to May 1, 1950, would be retained 100% by the accountant and those accountants who used the office of L. Hicks Taylor & Company would, upon Mr. Taylor's return to Seattle, work out an arrangement whereby they would make reasonable compensation for the use of said space.

"As this is but a temporary measure pending Mr.

(Testimony of L. Hicks Taylor.)

Taylor's return, all matters will be subject to adjustment upon his return.

"G. F. K."

Q. (By Mr. LeSourd): While you were at McNeil Island, Mr. Taylor, did you receive any letters from your wife indicating that Mr. Taylor—excuse me, Mr. Kachlein—was performing further legal services for you and herself?

Mr. Griffin: Object to the form of that question as leading and not the best evidence.

Mr. LeSourd: It is preliminary, your Honor.

The Court: The question is whether Mrs. Taylor——

Mr. LeSourd: (Interposing) Whether Mr. Taylor received letters at McNeil Island relating to legal services. A. Yes, I did.

The Court: It is a preliminary question. I think the objection may be overruled. It is leading, of course.

Mr. Griffin: That isn't the point, if the Court please. He puts in the witness' mouth the contents of the letter, the letter not being in evidence. I don't know if it will ever get in evidence. Did he receive a letter from his wife? Yes.

The Court: I think probably the question inasmuch as it contained the nature of the letter, objection to it might be sustained. If you wish to restate the question, you may, Mr. LeSourd.

Q. (By Mr. LeSourd): Did you receive letters from your wife while you were at McNeil Island?

A. Yes.

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-75 marked for identification.

(Defendants' Exhibit A-75 marked for identification.) [3635]

Q. (By Mr. LeSourd): Handing you Defendants' Exhibit A-75, for identification, can you tell us what that is?

A. This is a letter from my wife. I don't quite spot the date here. It is marked Tuesday evening.

Q. I don't believe it is dated. Do you know, in general, about when that was received?

A. I would think in August.

Q. You are not sure of the exact date?

A. No, I am not.

Q. But it was during the time you were there at McNeil? A. That is right.

(Whereupon, there was a brief pause.)

Mr. LeSourd: I will offer Defendants' Exhibit A-75.

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial; self-serving.

Mr. Moriarty: I join in the objection.

Mr. LeSourd: If your Honor please, of course, the proof of the facts therein stated will have to await Mrs. Taylor's testimony but I desire to show this as a part of Mr. Taylor's testimony to indicate the information that was brought to his [3636] attention and being the basis of his reliance during this period on Mr. Kachlein.

Mr. Griffin: That doesn't change the objection to the document.

(Testimony of L. Hicks Taylor.)

(Whereupon, there was a brief pause.)

The Court: The Court will sustain the objection at this time, Mr. LeSourd.

Mr. LeSourd: We have a series of these letters, your Honor, all of which I will have identified by this witness and all of which we think are material at this time for this same purpose, which is one of the items outlined in my memorandum to the Court to indicate the basis for Mr. Taylor's reliance on Mr. Kachlein in leading up to a later series of events.

The Court: As I understand, these letters are offered primarily to show Mr. Kachlein was representing Mr. Taylor.

Mr. LeSourd: That is right, all this series now deals with that. That is correct. That is, primarily to show that Mr. Taylor had received this information. The fact that he received the information is relevant at this time.

The Court: Well, of course, he has testified he has. [3637]

Mr. LeSourd: Yes.

The Court: Now, it may be that later it could be material. I don't know that it would merely serve to verify his oral testimony.

Mr. LeSourd: He hasn't testified to the nature of the information furnished him. There was objection made along that line, that the letters were the best evidence, and I could ask him orally about each of these as to the information furnished to him, but here we have the letters which themselves

(Testimony of L. Hicks Taylor.)

speak for what information was brought to his attention.

The Court: The sole purpose is that he received letters and would serve to indicate that Mr. Kachlein was representing him?

Mr. LeSourd: Was continuing, yes.

The Court: But I don't know what the objection may be. If you wish to ask a further question about letters received here, you may do so, and if objection is made the Court will have to rule on it but at this time the Court will sustain objection to the letters for that purpose.

Mr. LeSourd: Well, your Honor, I will have all these identified in turn.

Mr. Griffin: Separately? [3638]

Mr. Moriarty: Can they be marked as one exhibit, Mr. LeSourd?

Mr. LeSourd: Yes, we can.

Mr. Moriarty: We have quite a bulk already.

Mr. LeSourd: Yes, that is right, we do.

The Court: They all serve the same purpose, Mr. LeSourd?

Mr. LeSourd: This group, yes.

Mr. Moriarty: I suggest they be marked 75-A, B, C, D, if you wish to go into that, all as one exhibit.

The Court: If marked as one they are not subdivided unless there is some distinction necessarily among the letters.

Mr. LeSourd: I think perhaps they can be sim-

(Testimony of L. Hicks Taylor.)

ply stapled. I have already asked questions about A-75.

The Clerk: Defendants' Exhibit Number A-76 marked for identification.

(Defendants' Exhibit A-76 marked for identification.)

Q. (By Mr. LeSourd): Mr. Taylor, handing you Defendants' [3639] Exhibit A-76, for identification, can you state what those are?

A. These are letters from my wife dated May 25th, and May——

Q. Let's refer to them by the first sheet and second sheet and give the date.

A. The first sheet at the heading is marked Thursday Night, May 15th; the second sheet is marked Sunday Night, May 28th, 1950. The third sheet is Tuesday evening.

Q. Is there, on that third sheet is there a date on the back of the sheet, a received stamp?

A. "Received June 10th, Federal Prison Camp." The next letter is dated June 15th; and the next letter is dated Wednesday Night, June 21st; and the next letter is Tuesday Night, August 29, 1950.

Q. These were all received by you while you were at McNeil Island? A. Yes, sir.

Q. Were you—what, if anything, were you advised by letters during the summer as to continuing legal services by Mr. Kachlein?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial and not the best evidence and hearsay. [3640]

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: It is not hearsay, your Honor. It is offered to show that he received such advice.

The Court: Objection overruled.

A. I received letters from my wife informing me that Mr. Kachlein had.

Mr. Griffin: Just a moment, if the Court please.

The Court: Just a moment.

Mr. Griffin: That is the very basis for the objection.

The Court: The question is "yes" or "no" and he said "yes."

Mr. LeSourd: All right.

Q. (By Mr. LeSourd): And what information did you receive concerning this matter?

Mr. Griffin: Objected to as incompetent.

The Court: Objection sustained.

Mr. LeSourd: If your Honor please, I feel that the fact that he received this information—it is not offered by this witness as to the truth of the fact but this witness should be able to testify he was advised that Mr. Kachlein was continuing to act on various legal matters for Mr. and Mrs. Taylor [3641] as a basis for his belief.

The Court: He testified he received letters and he testified they were from Mrs. Taylor. I think that is as far as it can go. If it should develop that there is some dispute or challenge to that, I believe it may be possible that it may be material but beyond that—as a matter of fact, I don't believe there is anything competent or material in that correspondence——

(Testimony of L. Hicks Taylor.)

Mr. Griffin: (Interposing) If the Court please——

The Court: And, of course, it isn't the best evidence.

Mr. Griffin: Having read the one letter, I assume the others are the same.

Mr. LeSourd: You can read them.

Mr. Griffin: I am willing to stipulate that Mr. Kachlein represented Mr. Taylor down to October 27, 1950, at which time he called you to his office to represent Mr. Taylor.

Mr. LeSourd: I am certainly willing to show that stipulation, your Honor, as long as it is understood that by such a stipulation I am not in any way prevented the showing by proper testimony in this case. [3642]

Mr. Griffin: There will be no objection on my part to any questions to Mr. Taylor as to what Mr. Taylor knows, or to Mrs. Taylor for what she knows.

The Court: You accept the stipulation then?

Mr. LeSourd: With that reservation, yes, sir.

The Court: I take it any questions that are proper wouldn't be barred anyway.

Mr. LeSourd: Yes, very well.

The Court: The stipulation may show.

Mr. LeSourd: May I have this marked, please?

The Court: Is that another letter?

Mr. LeSourd: This is dealing with another situation, yes, sir.

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-77 marked for identification.

(Defendants' Exhibit A-77 marked for identification.)

Q. (By Mr. LeSourd): Handing you Defendants' Exhibit A-77, for identification, Mr. Taylor, would you state what that is? [3643]

A. This is a letter from my wife dated Thursday Night, August 17, 1950.

Q. Received by you at McNeil Island?

A. Received by me at McNeil Island.

Mr. LeSourd: While they are examining that I will ask a question:

Q. (By Mr. LeSourd): Was any information brought to your attention while you were at McNeil Island concerning steps which your brother Jack was taking? A. Yes, there was.

Q. And was that brought to your attention by this letter you have just identified?

A. That is correct.

(Whereupon, there was a brief pause.)

Mr. LeSourd: I will offer Defendants' Exhibit A-77, if the Court please.

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial and hearsay and self-serving and the same objection as to the other letters in which I stipulated away the necessity for them.

Mr. LeSourd: This one, if your Honor please, is in a different category.

The Court: I am inclined to sustain the objec-

(Testimony of L. Hicks Taylor.)

tion but I might read it over and then hear [3644] from you at recess if you wish.

Mr. LeSourd: Yes, your Honor.

My next series of questions—I will go ahead and introduce these others and we can consider them as a series, if the Court please.

The Court: All right.

The Clerk: Defendants' Exhibit Number A-78 marked for identification.

(Defendants' Exhibit A-78 marked for identification.)

Q. (By Mr. LeSourd): Mr. Taylor, upon receiving information concerning certain steps being taken by your brother Jack, what did you do?

A. I immediately got permission to write an added letter to my brother.

Q. To your brother?

A. Well, I will correct it. My mail could only go to my sister for my brother and sister. We were allowed three letters a week and they must be addressed to the same party.

Q. Handing you Defendants' Exhibit A-78, I believe it is, would you state what that is?

A. That is my letter to Anna S. M. Taylor, my sister, on a business permit from the Island. [3645]

Q. What is the date of it?

A. August 21, 1950.

Q. What was the fact with respect to where your sister Anna lived and your brother Jack?

A. They lived together at 102 North Broadway.

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-79 marked for identification.

(Defendants' Exhibit A-79 marked for identification.)

Q. (By Mr. *Taylor*): Did you receive any reply to your letters? A. Yes, I did.

Q. Handing you Defendants' Exhibit A-79 for identification, I will ask you what that is.

A. This is a letter from my sister, dated August 24, 1950.

Q. Is that in reply to the letter——

A. (Interposing) That is in reply to the one I just spoke of.

(Whereupon, there was a brief pause.)

Mr. LeSourd: At this time I will offer Defendants' Exhibits A-78 and A-79, your Honor, and we can present that matter at recess. It is in connection with the other letters.

The Court: All right. It is objected [3646] to?

Mr. Griffin: Yes, your Honor, same objection.

The Court: All right then, at this time, Mr. LeSourd, do you want to ask more questions or recess?

Mr. LeSourd: It might be better to recess and preserve the continuity.

The Court: All right.

Ladies and Gentlemen of the Jury:

We will now take the mid-afternoon recess and the Court calls your attention to the admonition and asks that you heed it now.

Before we do that, you have no more along that line?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: No, your Honor, it covers one set of facts.

The Court: The recess may be a bit longer than otherwise because of the argument on evidence.

You may now be excused.

(Whereupon, the Jury retired from the courtroom.) [3647]

* * * * *

The Court: You may proceed, Mr. LeSourd.

Q. (By Mr. LeSourd): Mr. Taylor, were you visited by Revenue Agents while you were at McNeil Island? A. Yes.

Q. When was this?

A. September 6, 1950.

Q. And who was there? Who came over?

A. Mr. Eppler, Mr. Marx and Mrs. Stokie.

Q. What did they want?

A. The first statement, I believe, that Mr. Eppler made was that from the records obtained to date that Mr. Hans Forster—Issaquah Creamery had displayed over one million dollars unreported income and wanted to know if I wanted to make a statement.

Q. What happened, Mr. Taylor, at that time? What did you do?

A. It rather floored me for the minute. I hadn't realized any such situation could have possibly existed; and I had discussed the visit without any knowledge from anybody—discussed the visit with Mr. Kildahl and he said——

Q. (Interposing) Who was Mr. Kildahl? [3659]

(Testimony of L. Hicks Taylor.)

A. I might explain: Mr. Kildahl is the probation officer at McNeil Island Prison Farm. Mr. Kildahl——

Mr. Griffin: Just a moment. We can't get into this discussion with Mr. Kildahl.

Q. (By Mr. LeSourd): Tell us just what the Agents wanted from you.

A. They asked me for a statement and they had all the books and records, I believe, of all these companies with them, a large pile of stuff with them.

Mr. Griffin: If the Court please, I think perhaps I am in error. Mr. Taylor is a Defendant here. I assume we reach the stage here where I am going to be clear about this thing. I am in error in objecting to that question as to what the parole officer said to him. If it is material to the Defendant's case, I think an instruction to the Jury that it is hearsay so far as the Defendant Forster is concerned——

The Court: (Interposing) I don't believe you are asking for it, are you?

Mr. LeSourd: No.

Mr. Griffin: He withdrew it on my objection.

The Court: The question is if you want to pursue it.

Mr. Griffin: So far as Taylor's defense is concerned. I am entitled to an instruction to the Jury as to the limitation.

Mr. LeSourd: I wasn't pursuing that anyway. I was trying to get at what was done.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: All right.

Q. (By Mr. LeSourd): You mentioned these papers and the records they had. Was anything said in regard to your working papers?

A. They told me that they had my working papers there. They had obtained them that morning, if I remember rightly.

Q. When you went to McNeil Island what did you do with your working papers?

A. Just before I left, probably a week or two before, I very carefully arranged all my working papers and ledgers of past years in cartons and did it very carefully so that working papers and ledgers would tie together and took them to the Issaquah Office of the Issaquah Creamery and placed them on shelves there so that they could be reviewed readily.

Q. Was anything said at that time when [3661] you took them there with regard to how long they would be there?

A. My understanding was——

Mr. Griffin: Just a moment.

Q. (By Mr. LeSourd): Was anything said?

A. They would be there ready for me when I returned.

Q. Did Mr. Kachlein ever communicate with you with regard to releasing your working papers to the Government? A. He did not.

Q. Did you ever advise Mr. Kachlein of your willingness to waive privilege in regard to them, Mr. Taylor? A. I did not.

(Testimony of L. Hicks Taylor.)

Q. Did you give any statement to the Agents on this visit?

A. I addressed Mr. Eppler in this way. I said, "Mr. Eppler, I would not care to make a statement without legal counsel present"; and he immediately said, "Who is your lawyer?"; and I said, "Mr. George Kachlein"; and the reply was, "Oh."

Q. And what happened after that?

A. I was so disturbed and mixed up on it I got up and left the room. [3662]

Q. Was any information brought to you prior to your leaving McNeil Island concerning an appointment with Mr. Kachlein?

A. Yes. My wife visited me—I will change that—my wife told me when I came out, the Sunday she picked me up that she had an appointment for Wednesday morning with Mr. Kachlein, the following Wednesday.

Q. Do you recall the date of that appointment?

A. That would have been the 13th; the morning of the 13th.

Q. Of what month? A. Of September.

Q. 1950? A. 1950.

Q. By the way, when you returned from McNeil Island, what date were you released?

A. The 10th.

Q. Of September? A. Yes.

Q. And when you returned did you find any communication from Touche, Niven, Bailey and Smart awaiting you?

(Testimony of L. Hicks Taylor.)

A. Yes, I found a communication dated September 8, 1950. [3663]

Q. Is that the letter that has been introduced in evidence here suggesting you come down and review their report? A. That is correct.

Q. Did you respond to that letter?

A. I did not.

Q. Why not?

A. I felt that if anyone should talk to me about this situation it should be either Mr. Kachlein or Mr. Forster personally, not some outside organization.

Q. Did you go to Mr. Kachlein's office on September 13, 1950? A. We did.

Q. Who was present?

A. Mr. Kachlein, Mrs. Taylor and myself.

Q. What occurred at that meeting?

A. We discussed many things but Mr. Kachlein was extremely anxious that my wife and I get started on our trip. We had planned a trip for one month.

Q. Was any mention made of the length of time you would be away?

A. The desire was that we be away for at least thirty days and was cautioned not to make a [3664] statement to the Revenue Agents.

Q. You say you were cautioned not to make a statement? A. Yes.

Q. By whom? A. Mr. Kachlein.

Q. Was any mention made by Mr. Kachlein of

(Testimony of L. Hicks Taylor.)

any conflict between his representation of Mr. Forster and of you? A. There was not.

Q. What happened after this meeting?

A. My wife and I returned to our home and prepared and left on our trip on Friday morning.

Q. Did the Agents try to see you before you left?

A. If my recollection is correct, on Tuesday the 12th Mr. Marx and Mr. Eppler were in my office in the Textile Tower; I believe in the morning—in the afternoon——

Q. (Interposing) This is the day before you saw Mr. Kachlein?

A. The day before we saw Mr. Kachlein. I might be wrong on the dates but I don't believe so, and I think in the afternoon—May I correct that date? I believe it was the day following we saw Mr. [3665] Kachlein that Mr. Eppler and Mr. Marx came to our home. I was in the basement and I believe our cleaning lady was making so much noise with the vacuum cleaner that nobody heard the door, or heard the bell. I happened to see the car back out of the driveway. That is the reason I knew they were there, and I had an appointment with my sister to go and see her and I understand that Mr. Marx and Mr. Eppler had talked to her just shortly before I got there.

Q. Now, when did you leave on your vacation?

A. The next morning at seven o'clock.

Q. And when did you return?

A. The 15th of October, 1950.

(Testimony of L. Hicks Taylor.)

Q. And what—did you talk to Mr. Kachlein then?

A. It is my recollection that I phoned Mr. Kachlein the evening of the 16th and he requested me to come to his office the next day and I believe on the phone he said something that he would either have to take my case or Mr. Forster's case.

Q. Did you go to his office then?

A. I went to his office the next morning and he explained his position and I approved the change. Mr. Kachlein wondered who I wanted to employ and [3666] I signified that I did not particularly have anybody in mind and he took the telephone book from the desk and referred to a number of different ones and I had had a previous recommendation of the gentleman I hired so that was the man that was called, Mr. LeSourd, and he came to the office of Mr. Kachlein and agreed to take my case.

Mr. LeSourd: If the Court please, subject to our understanding as to our right to recall Mr. Taylor for the purpose of the items which your Honor has tentatively ruled on, at this time, we rest.

The Court: You mean you complete your direct?

Mr. LeSourd: Not rest, we—they may examine, yes.

The Court: Yes. It is understood the Court will consider that matter at a later date.

Mr. LeSourd: Yes, your Honor.

The Court: Mr. Moriarty?

(Testimony of L. Hicks Taylor.)

Mr. Moriarty: Mr. Obenour will conduct the cross-examination.

Cross Examination

Q. (By Mr. Obenour): Mr. Taylor, do you recall the opening statement of Counsel at the start of this trial? [3667]

A. By "Counsel", may I ask——

Q. (Interposing): Do you recall the statement of Mr. LeSourd that there was a reasonable amount of undisclosed income of Mr. Forster and the Issaquah Creamery upon which there is a tax due?

A. Yes.

Q. Do you agree with that statement?

A. From the evidence here, it is apparent.

Q. Do you recall the statement of Mr. Griffin in the opening statement that there was tax due, and that it was only a question of who did it?

A. Yes, I remember the statement.

Q. Do you agree with that statement?

Mr. LeSourd: I will object to this testimony, your Honor. It seems to me it is not proper cross-examination.

The Court: Well, it would appear to be——

Mr. LeSourd (Interposing): It calls for a conclusion of this witness.

The Court: In what manner are you asking the questions, Mr. Obenour; whether he agrees with Mr. LeSourd or Mr. Griffin?

Mr. Obenour: Yes, sir; whether he agrees with Mr. Griffin's opening statement to the jury, at

(Testimony of L. Hicks Taylor.)

which time he declared it was only a question of who did it. [3668]

The Court: Well, the form of the question the Court will sustain an objection to. The matter may be in some other way material, but not proper in the way you are approaching it.

Q. (By Mr. Obenour continuing): Did you hear Mr. Holtberg's testimony as to his computations on exhibits 278, 279 and 280, the net worth computation of Mr. Forster, and the specific item computation of Mr. Forster, and the specific item computation for Issaquah Creamery Company and the taxes due thereon?

A. I remember the schedule, but I don't remember the amount.

Q. Do you want to refresh your recollection as to the amounts of those exhibits?

A. Well, do you want to question me on them?

Q. I will ask you——

A. (Interposing): Was that it?

Mr. LeSourd: Just a moment. If Counsel will ask questions and if he wants him to refresh his recollection, he can. It isn't material whether the witness wants to refresh his recollection.

The Court: We will proceed. What is the question now? Is there a question now? Is there a question pending, Mr. Obenour? [3669]

Mr. Obenour: Yes, sir, I believe there was.

Mr. Griffin: Do you want to refresh your recollection?

The Court: The Court will sustain objection to that question.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Do you agree with Mr. Holtberg's computation as to the amount of income tax due based upon the net worth computation of Exhibit 278?

Mr. LeSourd: Objected to, your Honor, as calling for the conclusion of this witness. There is no showing he has made a computation as to whether he would agree.

Mr. Obenour: If the Court please, he was present when the testimony was presented.

The Court: I will overrule the objection. I think he partially answered, but you may answer it, Mr. Taylor, if you care to.

A. I can answer that as far as the schedule as prepared by Mr. Holtberg, I think he did it correctly, but I don't know the residue of the figures, where they obtained all of them.

Q. (By Mr. Obenour): Do you agree that there was at least that much tax due to the Government as computed by Mr. [3670] Holtberg from the evidence presented here, both as to Mr. Forster and Issaquah Creamery Company, as shown by Exhibits 278, 279 and 280?

Mr. LeSourd: That is objected to as irrelevant, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): To your knowledge, is there a tax due the Government from the undisclosed income of Mr. Forster and Issaquah Creamery?

Mr. LeSourd: Same objection, your Honor, ir-

(Testimony of L. Hicks Taylor.)

relevant and immaterial. Whether or not Mr. Taylor thinks there is a tax due. There is no showing.

The Court: It doesn't make any difference now whether he thinks there is a tax due. Isn't it a question of what he thought at the time?

Mr. Obenour: I will ask if there is a conflict between the witness now and the computation Mr. Holtberg made, and if there is any difference, will he state——

The Court: (Interposing) What is the issue?

Mr. Obenour: The issue is whether there is tax due, and whether this man is a defendant.

The Court: That isn't the issue. The question is whether this defendant caused or had anything to do with filing a false and fraudulent statement [3671] in 1945 to 1949.

Mr. Obenour: Yes, sir; based on undisclosed income.

The Court: The Court will sustain the objection.

Q. (By Mr. Obenour): To your knowledge, Mr. Taylor, was there a plan between you, Mr. Forster and Mr. Erickson, to evade this income tax?

A. There was not.

Q. Did you work with Mr. Forster and Mr. Erickson to evade any part of this tax?

A. No.

Q. Did you discuss Mr. Forster's tax with him?

A. Yes.

Q. Did you discuss Mr. Forster's taxes with Mr. Erickson? A. That I cannot say.

Q. You cannot say? Why?

(Testimony of L. Hicks Taylor.)

A. Well, I am not sure that I ever did.

Q. Did you ever discuss the taxes due Issaquah Creamery with Mr. Forster? A. Yes.

Q. Did you discuss the taxes due Issaquah Creamery with Mr. Erickson?

A. I am not positive that I did. [3672]

Q. Did you discuss ways of saving money for Mr. Forster on his income taxes?

Mr. LeSourd: Well, I will object to that, your Honor. It is too general,—ways of saving money. I object to that as irrelevant and too general.

The Court: It is a very broad question.

Mr. LeSourd: Yes.

Mr. Obenour: Yes, sir.

The Court: He stated he discussed taxes.

Q. (By Mr. Obenour continuing): Did you discuss with Mr. Forster the tax consequences, on the division of the business of Alpine and Issaquah Creamery in 1940 and 1941?

A. I would say to some extent.

The situation was brought up more or less through Mr. Beadon Hall, if I remember right, and corporation rates were increasing quite naturally at that time, and it was thought wise maybe to disincorporate.

Q. Did you explain this to Mr. Forster?

A. It is my belief that we discussed it, yes.

Q. And, when you say "We discussed it", who is that?

A. I rather think Mr. Forster and Mr. Hall, and

(Testimony of L. Hicks Taylor.)

[3673] I, and then later Mr. Forster and Mr. Jones and I.

Q. Did you discuss the tax consequences of changing the name of Arctic Gardens to Alpine Ice Cream with Mr. Forster?

A. It is my opinion that I did. And, also, took him to Mr. Grill of Jones and Bronson, and it may have been that Mr. Jones sat in and it was discussed.

Q. And there was a tax problem concerned over this changeover of Arctic Gardens to Alpine Ice Cream?

A. It was thought it would be beneficial to take the profit or loss and work it through.

Q. Did you discuss the tax consequences with Mr. Forster as to why the money he received from Simonson and Forster should not be declared as income?

A. Yes, I discussed it with him.

Q. And what did Mr. Forster say about that?

A. Mr. Forster felt that a losing company, while he drew the money out, he didn't draw it out as a salary for services, that he would have to return that money at some later date to carry the company on, and he didn't feel that he should pay tax on something that was only a withdrawal, or a temporary withdrawal.

Q. Did you explain anything about the tax [3674] consequences of that at that time to Mr. Forster?

A. Well, I believe I did, yes.

(Testimony of L. Hicks Taylor.)

Q. Was it Mr. Forster's idea, or your idea, that a drawn capital should not be income?

A. Well, I think that both of us felt the same way. It wasn't one-sided.

Q. And then it was a draw of capital that you were discussing, and not payment for equipment you were discussing with Mr. Forster?

A. Well, the end result was equipment in the picture.

Q. Was the payment for equipment or salary as a drawn capital that you discussed with Mr. Forster?

A. I discussed the point of the withdrawal as not a salary item.

Q. Payment for equipment would not then be salary, would it? A. No.

Q. Pardon?

A. It wasn't paying Mr. Forster for equipment. The end result was the money coming back to buy equipment for Simonson and Forster.

Q. Was that money that Mr. Forster received from Simonson and Forster payment for equipment he sold Simonson and Forster? [3675]

A. No. You are misinterpreting what I tried to bring out. Simonson and Forster were buying equipment from a separate source, and to be paid for by both Mr. Simonson and Mr. Forster from their own personal accounts on this withdrawal that they already made.

Q. And the withdrawal had already been made by Mr. Forster prior to this?

(Testimony of L. Hicks Taylor.)

A. Yes, all during that year.

Q. And that withdrawal had been charged to expense? A. And restored to income.

Q. And it was that drawn capital, as to whether or not it should be taxable income, that you discussed? A. That is right.

Q. Did Mr. Forster understand the tax consequences of these matters?

A. It is my opinion he did.

Q. You made out certain financial reports for Mr. Forster, is that correct, on these corporations?

A. Yes, I tried to make good ones.

Q. Did you explain these to Mr. Forster?

A. I believe so, pretty generally.

Q. Did he understand your financial statements? [3676]

A. I always felt that he did.

Q. Did Mr. Forster understand bookkeeping?

A. I don't believe he could do a full set of books, but I think he understands bookkeeping to some extent.

Q. Would he advise his employees on bookkeeping matters?

A. I am not sure that I ever heard him, but I think he could.

Q. Did Mr. Forster understand the amount of income he was making from all these businesses?

Mr. Griffin: I object to the form of that question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you ex-

(Testimony of L. Hicks Taylor.)

plain to Mr. Forster what his income was when you prepared his tax returns? A. Yes.

Q. Did he appear to understand the amount of income he was making?

Mr. Griffin: Object to the form of that question.

The Court: Objection sustained. [3677]

Q. (By Mr. Obenour continuing): Did Mr. Forster say anything to you to question the amount of income he was making during these years?

Mr. Griffin: May that question be read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. You are referring to the individual operations?

Q. (By Mr. Obenour continuing): Yes, sir.

A. The Alpine Dairy?

Q. The income he personally was making?

A. I would make him a statement at the end of the year of the results of the ledger of Alpine Dairy which he had an opportunity to examine.

Q. Did he ever—he had other sources of income?

A. Interest and dividends.

Q. Did he make any statements to you asking information, further information, about the amount of income you were showing upon his tax return?

A. I don't think that he ever questioned it. He knew what it was made from.

Q. Did he ever question the amount of taxes [3678] that he was paying on this income?

A. I don't believe so.

(Testimony of L. Hicks Taylor.)

Q. Your job, as far as your employment by Mr. Forster, was to supervise the bookkeepers of these various interests of his; is that correct?

A. That is not so.

Q. That is not so? Did you have anything to do about the hiring of any of the bookkeepers Mr. Forster employed at these various interests?

A. I used to assist Mrs. Wilcox at the Alpine Dairy, but not at any of the other institutions.

Q. You did assist Mrs. Wilcox?

A. Yes, I used to assist her.

Q. Would you say you would supervise Mrs. Wilcox's activities?

A. Well, Mrs. Wilcox was the office manager, and we worked constantly together. I never felt I had any authority over her.

Q. You were paid fifty dollars a month from each of these various companies; is that correct?

A. That is correct.

Q. And those duties were what, generally speaking?

A. My principal duty was caring for the general ledger and preparing income tax returns and excise [3679] tax returns and various other duties that Mr. Forster would assign to me.

Q. You would receive this information for the ledger from the bookkeepers at the various businesses? A. That is correct.

Q. Mrs. Wilcox is one? A. Yes.

Q. And you would say you worked with her, and not supervising her?

(Testimony of L. Hicks Taylor.)

A. I didn't feel I had any authority over her.

Q. And that was from 1934, or '35 you first became acquainted with her? A. 1932.

Q. And did you understand the system Mrs. Wilcox was using? A. Yes.

Q. Were you satisfied the system was adequate?

Mr. LeSourd: I will object. It doesn't matter whether he was satisfied, and not proper cross-examination. We didn't go into details of the bookkeeping system.

Mr. Obenour: He made the statement he had no knowledge of anything wrong in any way, and I believe it would open up the cross-examination.

Mr. LeSourd: Whether this was a perfect bookkeeping system or whether he was satisfied is irrelevant to the question of whether he knew the items were properly entered.

The Court: The question put is objectionable, whether or not he was satisfied, is not material.

Mr. Obenour: All right, sir.

Q. (By Mr. Obenour continuing): Did you—you were employed at Issaquah, employed before Mr. Erickson came along, is that right?

A. Yes.

Q. Were you familiar with the bookkeeping system at Issaquah Creamery? A. Yes.

Q. Did you explain that system to Mr. Erickson when he was engaged?

A. I don't believe so. He succeeded Miss Neukirchen and Mrs. Zack, I think, had pretty well taught him the system.

(Testimony of L. Hicks Taylor.)

Q. Did you ever discuss the system with Mr. Erickson that he was following?

A. Oh, not to any great extent.

Q. Did you ever make any effort to determine [3681] whether or not Mr. Erickson was competent in performing the duties at Issaquah?

A. It was always apparent to me that he seemed to be doing his work very well.

Q. How was it apparent?

A. From the journals he would turn over to me all completed.

Q. Did you ever explain to him what you desired your journals,—or for your journals?

A. He gave me everything I asked for.

Q. At Finstad and Utgard, did you—were you familiar with the books that were the bookkeeping system used there at Finstad and Utgard?

A. To a greater or less extent. They were installed before I started in working for them. All I handled was the ledger.

Q. Did you go through them at that time to determine what system was used? A. Yes.

Q. Did you discuss this system with the bookkeeper employed at Finstad and Utgard?

Mr. LeSourd: Objected to, your Honor, as irrelevant and immaterial, and improper cross-examination. The matter of the keeping of the books at Finstad and Utgard is something irrelevant to this case, and we haven't [3682] gone it it on direct.

The Court: Objection overruled. The question

(Testimony of L. Hicks Taylor.)

here is whether he discussed with the bookkeeper the books?

Mr. Obenour: Yes, sir.

A. I don't know that I did.

Q. (By Mr. Obenour): Apex Farms, did you discuss the bookkeeping system used by Mr. Keck at Apex Farms?

A. When you say "discussed"—I worked with Mr. Keck in the consolidation of the Blue Ribbon Dairy and Apex Dairy before they were combined into the one set.

Q. I believe you said, did you not, that he was doing such an exemplary job you saw no reason to disturb it? A. That is correct.

Q. You were satisfied, at least as to Mr. Keck, that he was a competent bookkeeper?

A. That is correct.

Q. And yet you did not do this with the other companies?

A. No, because they weren't a new set-up that I worked on. The books were all set up in the other companies. [3683]

Q. Then how could you determine Mr. Keck was doing such an exemplary job if the system was not set up?

A. Because we were consolidating two companies under one, and the system that Mr. Keck was using was very satisfactory.

Q. What system?

A. His bookkeeping system.

(Testimony of L. Hicks Taylor.)

Q. Were they—after the consolidation or before, when he was employed by Apex Dairy?

A. Well, he had one side of the operation at Apex Dairy at the time, and in the consolidation, we used the bigger portion of the Apex Dairy System.

Q. Did you discuss the bookkeeping system used by the bookkeeper at Renton Ice and Ice Cream Company?

A. Well, I think that it was set up there. Ray Schneider was there when I set it up, I believe, in 1942, I believe, or some place in there.

Q. Did you discuss the bookkeeping system with Miss Buchanan and Miss Corliss at Simonson and Forster?

A. I think I did to some extent, yes.

Q. Did you understand the system used there?

A. Yes. [3684]

Q. Was there any company, or any interest, of Mr. Forster for which you were employed to keep the general ledger and prepare the tax return—was there any such company that did not have proper bookkeepers or bookkeeping systems?

A. I felt that they had systems that were O.K. in each of the companies.

Q. And the information that they prepared in each instance was given to you to keep the general ledger, is that correct? A. That is correct.

Q. And prepare the tax returns?

A. Yes.

(Testimony of L. Hicks Taylor.)

Q. Would you say then you supervised the bookkeepers of these interests?

A. I would say that I did not supervise them.

Q. But you did receive fifty dollars a month from each? A. That is correct.

Q. You had some twenty or thirty other clients, I believe, at the time that you were doing similar work for?

A. Yes, I maintained an office.

Q. Was there any other client that had that many interests, paying you each fifty dollars a month? [3685] A. No.

Q. Did you have any other client that paid you what has been reported fifty thousand dollars for your services during this period?

Mr. LeSourd: I will object to that, your Honor. There is no showing of fifty thousand dollars in this period. It was fifty thousand dollars in the twenty years.

Q. (By Mr. Obenour continuing): During 20 years?

Mr. LeSourd: If it is fifty thousand.

A. I could take eight and make seventy-five thousand out of some of them, too.

Q. (By Mr. Obenour): During this time that you had these twenty or thirty other clients, did you advise any of them on their personal financial matters, or the financial matters of their companies?

Mr. LeSourd: Objected to as incompetent and irrelevant.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: He stated the duties he had during this time to the other clients.

The Court: I think it is immaterial what services he performed. Objection sustained as to other clients. [3686]

Q. (By Mr. Obenour continuing): Did you serve as financial adviser to Mr. Forster during your acquaintance with him?

A. I did not consider that I was Mr. Forster's financial adviser.

Q. Did you advise him on any of these companies?

A. I would not say that I advised him on any of them. I discussed them with him.

Q. What would be the purpose of the discussion?

A. Mr. Forster in most cases had his plan all worked out, and then would bring it to my office, or we would go and visit the people and look the situation over.

Q. Did you make a statement to Mr. Eppler and Mr. Marx on May 16, 1951, and again May 25, 1951, at this building?

A. I remember of being with them. The dates are a little vague.

Q. Do you recall making a statement to them that you were financial adviser, or serving in that capacity, before 1940 but after that time, you were not consulted?

A. That is a correct statement in this respect, [3687] that Mr. Beadon Hall had Mr. Forster right

(Testimony of L. Hicks Taylor.)

under his thumb, and we used to meet with him every time that I went to Issaquah to discuss how Mr. Forster was going to pay for the next shipment of milk that came in. Mr. Beadon Hall was the financial adviser. I sat in to produce the figures.

Q. Was there any of these companies that Mr. Forster acquired that you were not consulted on prior to his acquisition of them?

A. Any that I did work for after Mr. Forster made his first investigation, I sat in on and usually discussed them.

Q. You would not say your discussion was advice? A. I would not say that.

Q. You were admitted to the practice before the Treasury Department approximately twenty years, is that correct, Mr. Taylor?

A. That is correct.

Q. You are familiar with W—2 forms?

A. Yes.

Q. And the requirements? A. Yes.

Q. And what is that form?

A. A W-2 is the withholding form that is made out for employees of an organization where [3688] withholding and Social Security has been deducted, and shows the annual income, Social Security, and withholding tax, to be attached to the tax return 1040, that is filed for individuals.

Q. Are you familiar with Form 1099?

A. I am.

Q. And what are those, please?

A. 1099 is a form that a firm having paid

(Testimony of L. Hicks Taylor.)

rents, interests, commissions and some other things that they report to the Treasury Department for the information of the Department. They are an information return, is what they are called.

Q. You were fully aware of all the requirements, then, of the Treasury Department concerning these?

Mr. LeSourd: I didn't catch that question.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. LeSourd: Well, if your Honor please, to this point I will object—to that question and this line of questioning. I don't see the relevance or materiality to any of the issues in the case.

The Court: You say "concerning these", what are you referring to?

Mr. Obenour: W-2 and 1099, if the Court [3689] please.

The Court: Objection overruled as limited.

Mr. LeSourd: Limited to the returns in question, I have no objection. There is no W-2.

The Court: He testified to W-2 and to Form 1099. I think this is a concluding question.

Mr. LeSourd: Yes.

Mr. Obenour: Yes.

The Court: Do you have the question in mind, Mr. Taylor?

A. Might I explain? The explanation I made was my knowledge of those returns, not my duties of preparing those returns, in these companies.

(Testimony of L. Hicks Taylor.)

The Court: Just a moment, Mr. Taylor. The last question was as to your familiarity with the Treasury requirements as to form W-2 and 1099.

Mr. Obenour: Yes, sir.

The Court: Now, you might restate the question.

Q. (By Mr. Obenour): You understood what the Treasury Department required then as to the preparation of these forms?

A. If I were an employer, I would know what to do with those forms if I had people who came within their scope. [3690]

Q. Thank you. We have tax returns here, Exhibits 1 to 6, Mr. Forster, and for 1945 to '48 ten to fourteen, the returns of Issaquah Creamery Company, seventeen to twenty-one, Finstad and Utgard, twenty-two to twenty-four, Simonson and Forster, twenty-five to twenty-nine, Renton Ice, thirty and thirty-one, Apex, and 256 Arctic Gardens return. They are all signed by you. These are your signatures on all of them?

A. As far as I know, I think they are all there.

Q. And they were prepared by you?

A. Yes.

Q. And in each instance, you signed the return as preparing them and in some also as a corporation officer; is that correct? A. Yes.

Q. And those are all your signatures?

A. As far as I know. I think they all are. I have seen them pass by so many times, I am sure they are.

Q. And they all bear this stamp, to which you

(Testimony of L. Hicks Taylor.)

referred. What is the purpose, Mr. Taylor, of your putting this stamp upon these returns?

A. The purpose of the stamp is to notify the Treasury Department as to the assignment we had, or I [3691] had. It notifies the Department, on an individual return. It says, "Prepared from information furnished by the taxpayer without audit of the details contained therein."

That is a notice to the Treasury Department that an audit has not been made, or any verification.

Q. And the purpose, as far as you were concerned, then, would be to relieve you of liability of the truth of the return?

A. Reliability of the truth, did you say?

Q. Yes.

A. The figures furnished me, I have to assume, are the true figures.

Q. Then the purpose of this stamp would be then that other than from some change or alteration or error in the filling out of the blanks, you would have no responsibility then as to any of these returns?

A. When you say "an error," you mean a clerical error in computation?

Q. Well, what would be the effect of this stamp, so far as you see it, Mr. Taylor?

A. Anyone will make a clerical error in the computation of a tax return. The Treasury Department have calculators and they immediately make the correction and notify the taxpayer. [3692]

(Testimony of L. Hicks Taylor.)

Q. What is the effect of the stamp, then, as to the use of it by yourself?

A. It is to guarantee that the information shown in balance sheets, profit and loss statements, have not been audited or verified.

Q. So that it would relieve you of the responsibility to the Government as to the truth of these returns; is that what you say?

A. When you say "the truth of the returns," they are prepared from the information from the ledgers as accurately as possible that they can be prepared.

Q. When you say "books," you say your return is prepared without audit from the books and records of the client without audit of the details contained therein, and do you consider you are excluding the books you keep?

A. No, I am including the books I keep.

Q. Do you state what books you keep on this return?

A. It is prepared from the ledger.

Q. Does it show that on this stamp?

A. Well, naturally, the ledger is posted from the other books.

Q. Does it show on this stamp?

A. It says "Prepared from the books." [3693]

Q. Then your idea is that the books excludes the ledger that you keep, is that correct?

A. No, a ledger is a summary of the books.

Q. And what is the purpose, again, please, as

(Testimony of L. Hicks Taylor.)

to your use of this stamp to the United States Government?

A. It is a notice to Uncle Sam, or to the Treasury Department, pardon me, that the information has been furnished, and has not been audited as to detail.

Q. And that includes the companies in which you are an officer? A. Certainly.

Q. And in which you have worked with the bookkeepers in each instance in getting information?

A. The information is furnished me by the office force.

Q. And the tax return prepared by Mr. Keck of Apex Farms?

A. Mr. Keck prepared the income tax for Apex Farms from the records.

Q. And the stamp that you used then that it was prepared by you was not correct in the instance of Apex Farms?

A. I would just like to explain that a little.

Q. Was it, Mr. Taylor, or was it not correct as there used on the Apex Farms return?

A. I would not say it was incorrect, because I did have a little bit to do with the preparation of that return.

Q. Was it used on the other returns of Apex Farms?

A. It was not, because I did not have anything to do with them.

Q. You heard Mr. Keck's testimony that in each

(Testimony of L. Hicks Taylor.)

year he sent the tax returns to you to be signed and sent in. Do you recall that? A. Yes.

Q. Is that statement true? A. Yes.

Q. Did you use the stamp on the other returns?

A. No, because I did not prepare them.

Q. And Arctic Gardens, that return, is the stamp correct in that instance, too?

A. I rather think that was a mistake and an oversight.

Q. It was a mistake. Do you have recollection of that mistake, Mr. Taylor?

Mr. LeSourd: I didn't get that question.

A. I don't have recollection. [3695]

Mr. LeSourd: Just a moment.

The Court: Mr. Reporter, will you read the question?

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) Not until I saw the return here.

Q. (By Mr. Obenour): And now, your recollection is what?

A. I must have stamped it with other returns and signed it, and never looked at the face of it.

Q. You did not check the returns you submitted yourself?

A. I prepared the return, Mr. Obenour.

Q. You prepared the return? A. Yes.

Q. And you would prepare twenty or thirty returns and not sign or stamp them except all together?

(Testimony of L. Hicks Taylor.)

A. I wouldn't say that, but that is probably how it happened. I was surprised when I saw it here myself.

The Court: It is four o'clock, Mr. Obenour. Do you want to complete?

Mr. Obenour: Just one more question. [3696]

Q. (By Mr. Obenour): The other information contained then, in these returns, the corporate returns, and so forth, which is general information, and not pertaining to the actual amounts of money involved, that information was prepared by you, the other information in the returns other than the figures themselves?

A. What are you referring to?

The Court: Other information?

Mr. Obenour: Yes.

Q. (By Mr. Obenour): The details of the questions that are put in here as to where prior returns were filed and the incorporation data, and so forth. That was prepared by you?

A. That was taken from the previous returns.

Q. That was not taken from the books and records of the companies?

A. No, it never is.

Q. From what information?

A. The previous returns usually show where incorporated, and so forth.

Q. And you are responsible then for that information? A. I would say so, yes. [3697]

Q. And is that all, correct?

A. As far as I know, it is.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: We would recess now, if your Honor please.

The Court: Ladies and Gentlemen of the Jury: We will recess now until tomorrow morning at ten o'clock, and the Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

(Whereupon, the jury retired from the court room.)

(Whereupon, at 4:04 o'clock p.m. April 13, 1954, a recess was had in the within-entitled and numbered cause until 10:00 o'clock, a.m. April 14, 1954.) [3698] * * * * *

The Court: You may call the jury.

(Whereupon, the jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Obenour.

Mr. Obenour: Yes, sir. [3703]

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination

Q. (By Mr. Obenour): As I understand it, Mr. Taylor, you say then that this stamp that you used

(Testimony of L. Hicks Taylor.)

was to put the Government on notice that you had not audited the books of the taxpayer; is that correct?

A. That was the general purpose of the stamp.

Q. Do you consider the ledger included in the books of any company? A. I do.

Q. And you were keeping the ledger of all these companies, weren't you? A. That is correct.

Q. And were you attempting to put the Government on notice that you were not responsible for the ledger you kept?

Mr. LeSourd: Objected to, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you give notice to the Government in any way that you were not responsible [3704] for the ledger you kept?

Mr. LeSourd: Same objection, your Honor. Argumentative.

The Court: Objection overruled.

A. The ledger was the record from which I prepared the tax return.

Q. (By Mr. Obenour): And those are included in the books?

A. The ledger is a summary taken from the books of a company.

Q. Did you give the Government any notice that you were not responsible for the information contained in the reports, the tax returns, as gathered from your ledger?

Mr. LeSourd: Objected to as argumentative.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: There has been no answer, if the Court please.

The Court: It would appear argumentative. I will overrule objection on this one question.

A. If I understand the question correctly, I prepared the tax returns from a ledger that I kept. Does that answer your question?

Q. (By Mr. Obenour): No, sir. Did you give the Government any notice by this stamp, or otherwise—that you were [3705] not responsible for the contents of your ledger?

A. I would not think so.

Q. Now, you stated, I believe, that the use of your stamp on the Apex return was an accident; is that correct?

A. I didn't say it was an accident. I said I had worked some with Mr. Keck on that particular year, and I put the stamp on it.

Q. Which year was that?

A. I cannot remember. Whichever year it was on.

Q. That is the return in here?

A. That is my recollection of it, yes.

Mr. Maxwell: 31.

Q. (By Mr. Obenour): Exhibit 31, I believe.

Mr. Cox: Here is 31.

A. May I look at the return, Mr. Obenour?

Q. (By Mr. Obenour): Yes, just a minute. There are two returns, one for 1947 and one for 1949, Exhibits 30 and 31. Now, was that the year that you refer to?

(Testimony of L. Hicks Taylor.)

A. Examining this return, it is my opinion that this was typed in my office.

Q. Which return is that, please? [3706]

A. The Exhibit 30; that this return was typed in my office after working over the figures of Mr. Keck, and I signed it after working it over.

Q. You signed it after working it over, and that is how that one was stamped?

A. That is my recollection of it, yes.

Q. And then you did not have anything to do with the 1949 return, apparently? Is that correct?

A. I am referring to Exhibit A-31. If you will examine the typing, you will find that the typewriter used on A-31 is a typewriter at the Apex Farms.

The typing on Exhibit A-30 is a typewriter in my own office.

Q. You had nothing to do then with the return in 1949, Exhibit A-31?

A. Nothing to do with it, if I remember.

Q. Now, the Arctic Gardens return, you believe that was accidentally included with the others?

A. May I see the exhibit, please?

Q. Yes, certainly.

(Whereupon, there was a brief pause.)

Q. (Continuing) Exhibit 256, the Arctic Gardens return.

(Whereupon, Exhibit was handed to the witness [3707] by Mr. Obenour.)

A. I am looking at Exhibit 256. In the year 1946, it was necessary that all tax returns be ac-

(Testimony of L. Hicks Taylor.)

knowledged, and it called for an affidavit of those preparing the return.

I prepared the Arctic Gardens returns. Many of the records of the Arctic Gardens were kept at the warehouse, the freezer plant, and those records were worked by other people. I did not have a chance to check them in any way to determine their accuracy. When I prepared this return, there had been considerable sales in that year, and I felt that it required me to put my stamp on the return, and have myself acknowledged, even though I was secretary and treasurer of the corporation.

Q. And how about the stamp?

A. The stamp was put on for the same reason.

Q. The stamp was put on for the same reason?

A. Yes, sir.

Q. And then it was not an accident?

A. After examining this exhibit, I will say it was not an accident.

Q. Isn't it possible that either you or accountants employed in your office, particularly Mr. Fordyce Hall, rubber stamped these returns before they [3708] were filled out?

A. Not this particular return.

Q. Did you rubber stamp any returns before they were filled out?

A. Not as a rule. Sometimes maybe two or three, if you were going out to make a special return for somebody you would stamp them.

Q. And sometimes the returns were stamped with your stamp before you made out the return?

(Testimony of L. Hicks Taylor.)

A. Not intentionally that way. It might be——

Q. (Interposing) But they were?

A. Not often.

Q. But there were times?

A. I would say occasionally it was possible.

Q. You were also a Notary?

A. I have been a Notary for years, yes, sir.

Q. Did you put your notarial seal on the same way, just a bunch in a row, like the other stamp?

A. I would not say that, no.

Mr. LeSourd: Just a moment. Object to the form of that question.

The Court: Objection sustained.

Q. (By Mr. Obenour): How would you put your notarial seal on, Mr. Taylor? [3709]

A. Usually the party signed before me before I attached the seal.

Q. So that it would be no accident, your applying your notarial seal?

Mr. LeSourd: Your Honor, I will object to this line of questioning. It is completely irrelevant and immaterial to this case.

Mr. Obenour: I believe it would be relevant.

I ask that this be marked as Plaintiff's Exhibit next in order.

The Court: It doesn't appear now. If it is related to some matter——

Mr. Obenour: We are about to cover that matter now, if the Court please.

The Court: You may go into it and then——

(Testimony of L. Hicks Taylor.)

The Clerk: (Interposing) Plaintiff's Exhibit 285 marked for identification.

(Plaintiff's Exhibit No. 285 marked for identification.)

Q. (By Mr. Obenour continuing): I hand you Plaintiff's Exhibit 285 and ask if you can tell what that is, please, Mr. Taylor?

A. Plaintiff's Exhibit 285 is the tax return for 1948, the Apex Farms, Incorporated. [3710]

Q. Did you prepare that return?

A. I did not.

Q. Did you sign that return?

A. I did not.

Q. Is that your signature on the notarial seal there?

A. That is my signature as a Notary Public, yes.

Q. You did sign it as a Notary then?

A. I did, yes.

Mr. Obenour: I offer it at this time, if the Court please.

Mr. LeSourd: We will object to it, your Honor, on the grounds it is irrelevant and immaterial and not proper cross-examination. The relevancy doesn't appear at the present time, and I don't see where it is material to anything we have covered on direct.

The Court: Its relevancy isn't apparent, Mr. Obenour.

Mr. Obenour: If the Court please, we would refer the Court to the affidavit at the bottom of page one, the signature and the stamp.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: That is not the signature of Mr. Taylor you are referring to. [3711]

Mr. Obenour: That is exactly it.

Mr. LeSourd: Mr. Taylor's signature is only there as a Notary Public, as far as I can see.

The Court: It is his signature as a Notary Public you are referring to?

Mr. Obenour: That, and the stamp affixed there, if the Court please, by the signature on the affidavit.

The Court: You mean relative to information furnished?

Mr. Obenour: Yes, sir, and referring to the testimony of this witness as to the use of the stamp.

Mr. LeSourd: That stamp is over Mr. Keck's signature, as far as I can see on the return.

The Court: That is the way it appears.

Mr. Obenour: Yes, sir; but we would show it is Mr. Taylor's stamp, and even used on a return he did not sign in the affidavit.

It goes to the testimony of this witness on direct and cross examination on the manner in which these stamps were placed on the return.

Mr. LeSourd: If the Court please, I fail to see the relevancy of this matter at all. Mr. Keck was preparing these returns from the books of the taxpayer. Whether it is Mr. Taylor's stamp that was used [3712] or what it was, it seems immaterial to this case.

Mr. Obenour: It would be material how a return signed by Mr. Keck would bear a stamp of Mr.

(Testimony of L. Hicks Taylor.)

Taylor put on or after the signature along with the other returns he says that he was furnishing the Government.

The Court: It goes quite a ways. At this point, I will sustain the objection. If you want to argue the matter, the Court will hear from you.

Mr. Obenour: Yes, sir; can I examine the witness further as to the examination of the document?

The Court: I assume there is no question of identification, is there?

Mr. LeSourd: No, your Honor.

Mr. Obenour: I would establish the identification of the stamp, if the Court please.

The Court: If it comes in, it has to come in on the identification as to what it is, a return for Apex for 1948. Anything that may appear on there would only be admissible if introduced in evidence.

Q. (By Mr. Obenour): Did you ever put your stamp upon any tax returns which you did not sign, the affidavit of which you did not sign? [3713]

Mr. LeSourd: Objected to as immaterial and irrelevant.

The Court: It may be. I think that——

Mr. LeSourd: (Interposing) May I say, if your Honor please, on this matter: We have here a public accountant using a stamp which is a common practice in the profession, and using it where he prepared returns from taxpayers' records without verification of the details.

Now, it is immaterial, it seems to me, and com-

(Testimony of L. Hicks Taylor.)

pletely irrelevant if that stamp is used by other persons or in connection with other returns.

The Court: I don't think it is connected up. I will sustain the objection.

Q. (By Mr. Obenour continuing): Now, as I understand it, when you prepared Mr. Forster's returns, you would compute the profit for the—net profit for the year of Alpine Dairy, is that correct?

A. That was the principal item of his return, plus his salary at the Issaquah Creamery Company.

Q. Now, the Alpine profit would be computed from the ledger which you maintained?

A. That is correct.

Q. And then you would get the W-2 return from Issaquah [3714] for his salary?

A. As a rule, yes.

Q. And then you would ask Mr. Forster if he had any other outside income?

A. That is correct.

Q. And you knew he had no other W-2 forms on any of these returns?

A. I didn't know unless he would present them to me.

Q. Did you ever file any other W-2 forms other than the one for the Issaquah Creamery?

A. That was not my duty to prepare them. I attached the form with the return.

Q. Did you ever attach a W-2 form with any return you prepared for Mr. Forster other than the one from Issaquah Creamery?

A. I believe that is the only one, as I remember.

(Testimony of L. Hicks Taylor.)

Q. So that, to your knowledge, he had no other income from a regular salary?

A. That is my recollection, yes.

Q. And then he had a certain amount of other income which was dividends and interest given to you in one figure, I believe?

A. One or two figures, possibly three.

Q. There were no 1099's that you included in any [3715] of your returns, were there?

A. There may have been. I haven't any recollection of them right now.

The Court: What was the return?

Mr. Obenour: 1099, the form for other payments from corporations.

Q. (By Mr. Obenour): And you knew he had no draw, or taken no money out from any of these companies, principally Issaquah or Alpine, did you?

A. I believe that——

Mr. LeSourd: Just a moment, your Honor. I will object to that, including Alpine. It is not a company. I object to the form of the question.

Q. (By Mr. Obenour): He had a drawing account at Alpine and Issaquah?

A. If he drew, there was an account for him, yes.

Q. Would you check—well, was there a drawing account at Alpine Dairy?

A. If I recollect correctly, there was a number of income tax payments made for Mr. Forster, charged to his personal account in the Alpine Dairy ledger.

(Testimony of L. Hicks Taylor.)

Q. And that would be on the ledger you maintained? [3716] A. Yes.

Q. And that would be the only money, then, that he would have taken out of Alpine Dairy and cashed, to your knowledge?

A. That is correct.

Q. And you would check that drawing account before preparing your returns?

Mr. LeSourd: Well, if the Court please, I will object to that. It is an individual proprietorship. It is irrelevant and immaterial to this *case. Objection* overruled on that ground.

Do you have the question in mind?

The Witness: I am not positive.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. The drawing account always appeared, the ledger account appeared, so that I could pick off the income tax payment items from it, yes.

Q. (By Mr. Obenour): So that you would know he had received no other money in cash in that year from Alpine Dairy other than the payment for income tax? A. As far as I know, yes.

Q. And would you check the drawing account for [3717] Issaquah Creamery Company before you would prepare the Issaquah Creamery Company return?

A. If the ledger account showed any withdrawals I would have it before me.

Q. Would you check it?

(Testimony of L. Hicks Taylor.)

A. What do you refer to, by "check it"?

Q. Did you ever examine your ledger for Mr. Forster's drawing account to see whether or not he had received any cash from Issaquah Creamery charged to his drawing account?

A. The ledger would show it, if he did.

Q. Was there ever any draw by Mr. Forster from Issaquah Creamery in the years 1945 to 1949?

A. I don't believe I could say for certainty without seeing the ledger. It is my opinion there was not.

Q. So, then, to your knowledge, the only cash money that Mr. Forster would actually receive in any year from 1945 to 1949 would be the salaries he received from Issaquah Creamery, $18,000 a year, and the dividend and interest figure he would give to you? A. That is correct.

Q. So that would be the entire income?

A. That is right.

Q. And included in his tax return would be the net [3718] profit of Alpine Dairy, which did not mean cash to him, but money left in the company, is that correct? A. That is correct.

Q. So that, during the years 1945 to 1949, his returns, while they would show considerably greater income, he actually was receiving approximately $20,000 a year in cash to him?

A. I don't know whether I understand your question.

Q. The eighteen thousand plus dividends and

(Testimony of L. Hicks Taylor.)

interest would be about twenty thousand a year, average, that he would take out in cash?

A. As near as I can recollect, yes.

Q. And computing Issaquah Creamery Company's return, as I understand it, you would, through the years,—through the months in the year —get certain figures from Mr. Erickson from the books he kept and enter them on your ledger?

A. That is correct.

Q. And from your ledger, you would work on a work sheet and compute the tax return for Issaquah Creamery Company? A. Yes, sir.

Q. And do it in pencil and make your regular corrections [3719] that way?

A. That is correct.

Q. Would you ever go into the books of Issaquah Creamery Company that were maintained by Mr. Erickson for any matter in the preparation of the tax returns of Issaquah Creamery Company?

A. I did not audit the books of Issaquah Creamery Company.

Q. Now, in these other returns that you prepared, Apex—and I believe, Mr. Keck would prepare those returns, and you would go over them?

A. I would peruse them a little, yes.

Q. And Simonson and Forster and Finstad and Utgard, you would receive in a similar manner as Issaquah's figures, from the books and post to the ledger and then make the returns for those companies? A. That is correct, yes.

(Testimony of L. Hicks Taylor.)

Q. And you wouldn't go into the books for the preparation of those returns?

A. I would not audit the books, no.

Q. And Renton Ice and Ice Cream, you would get figures from Mr. Schneider and the bookkeeper?

A. Yes.

Q. And post to your ledger and make your return? [3720] A. Yes.

Q. And you wouldn't go into the books of Renton Ice and Ice Cream then for the preparation of your return? A. No.

Q. And you would prepare Mr. Schneider's return?

A. From his W-2's and information he furnished.

Q. And Mr. Egeness's return?

A. The same way.

Q. And Mr. Forster's daughters' return?

A. Yes, from W-2's.

Q. And what income were they receiving?

A. I do not recollect what their income was, at the present time.

Q. It was income they had received from Issaquah Creamery?

A. From Issaquah Creamery.

Mr. LeSourd: Just a moment. I will object to this as improper cross-examination, your Honor. We did not go into those matters on direct because they are not involved in this case, and not a part of the income that is alleged by the Government to have resulted in evasion. [3721]

(Testimony of L. Hicks Taylor.)

The Court: I don't know the purpose.

The Witness: It was income——

Mr. Obenour: Prepared by——

The Court: (Interposing) What is the purpose of it?

Mr. Obenour: The general affiliation of this man with the entire over-all picture of Mr. Forster and his enterprises, which also include the preparation of tax returns for individuals.

The Court: I will sustain the objection.

Q. (By Mr. Obenour): And finally, Arctic Gardens, which you have discussed, you also prepared from your books? A. Yes, sir.

Q. How would you make sure you would include all the income of Mr. Forster? Did you make any investigation at all? A. I did not.

Q. You simply accepted his ideas?

A. I accepted his figures.

Q. Now, this matter of the bank interest, you knew he had savings accounts?

A. I knew he had some savings account, or one saving account, at least.

Q. What saving account were you aware of?

A. The one at the Issaquah Bank.

Q. The one at the Issaquah Bank?

A. Yes.

Q. Is that his personal account?

Q. Yes, his personal savings account.

Q. Were you aware of its contents at that time?

A. No, not particularly.

(Testimony of L. Hicks Taylor.)

Q. Well, were you aware of one hundred thousand dollars of account 198 at any time?

A. Not as to any amounts, no.

Q. You never knew what the amounts were?

A. I never knew *that* any balances were.

Q. And Peoples Bank, did you know he had an account at Peoples Bank?

A. I have a recollection of him mentioning in 1948 or '9 that he had an account there.

Q. You had attended meetings regularly with Mr. Forster with Mr. Donaldson concerning loans and so forth?

A. I occasionally attended meetings. I never negotiated a loan or sat in the final negotiation on any loans.

Q. Did Mr. Donaldson and Mr. Forster ever discuss the account he had with Peoples Bank at the time [3723] you were present?

A. I haven't any recollection of it.

Q. Did they ever discuss any amounts he had on deposit at Peoples Bank?

A. I don't have any recollection of it.

Q. Did they ever differentiate between his personal savings account at Peoples Bank and the Alpine Account at Peoples Bank?

A. I am not sure I understand what you are——

Q. (Interposing) Did you know that the Alpine Dairy had an account at Peoples Bank?

A. Absolutely, yes. That was where this money was deposited from Alpine Dairy.

Q. You knew about that one?

(Testimony of L. Hicks Taylor.)

A. I knew they had the account there, yes.

Q. And you knew the balance in that account?

A. No.

Q. Would you know the balance of the account for Alpine Dairy that was kept?

A. The Alpine ledger would show the balance each month, yes.

Q. And you were aware, then, that Mr. Forster had his personal account in addition to that account?

A. A personal account besides the Alpine Dairy?

Q. Yes. [3724]

A. Are you referring to a savings account?

Q. That is right.

A. Yes, I knew that he had a savings account.

Q. Did you know he had an account at the Renton Bank? A. No, I did not.

Q. You knew Renton Ice Cream had an account there?

A. Yes, the Renton Company had their account.

Q. But you didn't know he had his account?

A. I did not.

Q. Did you know that he had an account at the Greenwood Seattle-First National?

A. I did not.

Q. You say you would get a figure that would be the interest when you would prepare the tax return?

A. He would furnish me the figure, yes.

Q. Do you remember Mr. Forster's testimony that when you would be at his place for lunch, he

(Testimony of L. Hicks Taylor.)

would give you interest figures from his Account 198 from time to time?

A. I am afraid that that is not so. Any interest figures he gave me, he gave me at the plant. I never discussed his affairs at home.

Q. Now, you say you thought that this was net [3725] interest?

A. That was the intention, yes, of his figures that he gave me.

Q. What do you mean by "net interest"?

A. Well, he probably paid interest out and received interest.

Q. Paid interest—pardon me, paid interest out for what?

A. Well, I wouldn't know.

Q. Well, why would you think he would pay interest out?

A. Well, he had borrowings. The Arctic Gardens loan was in existence.

Q. You were aware of loans that he made?

A. Not all of them, no.

Q. Weren't most of his loans made by the companies and he simply signed as an endorser?

A. That I could not answer definitely.

Q. Were you present at Peoples when they were negotiated?

A. I don't believe that I ever was present when a loan was actually completed at the Peoples Bank.

Q. Were you there when it was negotiated?

A. I have been there when there was discussion, but not negotiated. [3726]

(Testimony of L. Hicks Taylor.)

Q. All right. In these discussions, were you ever present when it was determined that the loan would be to the company with Mr. Forster simply signing as endorser, or security?

A. That I cannot remember.

Q. You cannot remember? A. No.

Q. There would be no interest charged to Mr. Forster if he was simply surety on a loan, would there?

A. He was endorser. Whatever company made the loan would pay the interest, yes.

Q. So that he would not pay that interest?

A. Not necessarily, no.

Q. And the only personal loan you say you can recall is the one to Arctic Gardens?

A. It is the only one I had personal contact with.

Q. And you say you still believe this was a net figure he was giving you?

A. That is correct.

Q. When did you discuss this with Mr. Forster as to the net figure of interest?

A. Usually at the time of preparing tax returns. [3727]

Q. Will you explain what you meant by "net interest"?

A. I meant his net earned interest.

Q. Did you explain that to Mr. Forster?

A. Well, I imagine that I did at the time. I just don't recollect.

Q. When did you explain this to Mr. Forster?

(Testimony of L. Hicks Taylor.)

A. You refer to "explanation"——

Q. (Interposing) When——

A. (Continuing) The taxpayer usually is informed enough about his interest earnings to give a man the correct net interest that he has earned.

Q. Did you discuss net interest with Mr. Forster?

A. It was not necessary for me to discuss net interest with Mr. Forster. I asked him to give me the interest that he had earned during the year.

Q. And interest that he had earned during the year would mean to you that the man was deducting the interest on loans?

A. That would be correct, yes.

Q. Why would Mr. Forster know this?

A. He should know it.

Q. Why? A. All taxpayers know it.

Q. All taxpayer know it? [3728]

A. They should, yes.

Q. And then, is it a fact on the tax returns aren't there places which differentiate interest paid on loans as apart from the other breakdown of interest which shows interest earned?

A. Yes, when you are analyzing the tax return, the interest that shows in the—on the face of the return is interest earned.

On page 3 of Form 1040, there is a situation that exists where there is a standard deduction. The standard deduction, if a man earns over ten thousand dollars, he is allowed one thousand dollars. If he has real estate interest—real estate taxes, donations and miscellaneous earnings, medical ex-

(Testimony of L. Hicks Taylor.)

penses, and they develop over one thousand dollars, he can take a greater deduction than the standard deduction.

That is interest on outside holdings, such as real estate. Not on any business loans of any type.

Q. Well, if he made these loans himself, they wouldn't be business loans, would they?

A. They would be business, as far as he is concerned.

Q. Mr. Forster always took a standard deduction? [3729]

A. They would be business as far as he is concerned.

Q. Mr. Forster always took a standard deduction?

A. It is my recollection that he did.

Q. How would you then know whether he had any personal interest or not that he paid out?

A. He probably would not give me any interest on real estate or chattel mortgages.

Q. Why not?

A. Because he probably didn't have any of those.

Q. Didn't have any?

A. I don't know. He might have had.

Q. Did you ask him?

A. I don't know that I did.

Q. Is there any place on the tax return that calls for a showing of net interest where that figure is entered?

A. I think on the first page of 1040 it shows

(Testimony of L. Hicks Taylor.)

interest on the face of a return? Do you have a copy of it? We can display it.

Q. Personal return?

A. Yes. May we have the return to look at it?

Q. Handing you Exhibit 1.

(Whereupon, exhibit was handed to the witness by Mr. [3730] Obenour.

A. Item 3, on the face of the return, opposite "your income", "Enter here total amount of your dividends, interest, including interest from Government obligations unless wholly exempt from taxes."

Q. "Unless already exempt from taxes". Now, does that mean deducting the interest you pay for a loan?

A. The intent of this return is for you to report your net interest received.

Q. That says "net interest"?

A. It says "interest".

"Enter here total amount of dividends and interest"——

Q. And on page 3, it says "Enter interest paid on loans"?

A. There is no descriptive point on the interest on page 3 of this return.

Q. And you still say Mr. Forster should know you meant net interest, and should deduct the cost of the loans from interest shown to you?

A. I certainly do.

Q. And you—calling your attention to page 2, item 12, what is that item, please, on Exhibit 3?

Item 12 on page 2. What is that item, please?

(Testimony of L. Hicks Taylor.)

A. That is the interest that in the operating of a business——

Q. (Interposing) What does it say, please?

A. Item 12, interest on business indebtedness.

Q. Now, how can you prepare the tax return for Mr. Forster by receiving a net figure, as you described, of the interest earned, deducting the cost of interest paid?

A. For the simple reason that he is supposed to be keeping some record of his interest received, and his interest paid out.

Q. He didn't give you those figures, did he?

A. He didn't give me an itemized list, no.

Q. How can you prepare the tax return for Mr. Forster without having a breakdown of interest received and interest paid out?

A. The return does not call for a summary of the interest received and paid out.

Q. There is an item for interest on business affairs—there was an item on page 3 for interest paid for personal——

A. (Interposing) May I explain a little bit of that? Mr. Forster operates the Alpine Dairy, which [3732] requires a capital structure. All businesses require a capital structure, and many times it is necessary in their operations to obtain money from banks to maintain a purchasing power. That interest is strictly a business interest of the Alpine Dairy. Mr. Forster's savings bank accounts, any loans he makes outside of Alpine Dairy, are his personal

(Testimony of L. Hicks Taylor.)

bookkeeping problem, and they come from his bookkeeping, not from the Alpine Dairy account.

Does that clear up the point of this interest on item 12?

Q. Well, the interest that Alpine Dairy would have would be included in the net profit figure, that you would include in the tax return?

A. And, if you will notice in this schedule attached to the return here, that the—that we have wages, rent, light, power, truck expense, office expense, advertising, industrial insurance, licenses, interest in the amount of $3,118.95.

Q. So that business interest then of Mr. Forster would not be included in the figure he would give you? A. That is correct.

Q. And then we come back again: what is the basis under which you believed Mr. Forster was deducting [3733] the cost of loans in the figure he would give you for interest?

What interest did you believe he was deducting?

A. The interest he was paying out.

Q. Do you know of any?

A. Not to my knowledge. I never checked into his personal affairs.

Q. Did you ever discuss net interest at any time with Mr. Forster?

A. That was always what I asked him for, his net interest.

Q. Did you explain net interest to him?

A. Well, I don't recollect ever going into great detail about it.

(Testimony of L. Hicks Taylor.)

Q. Does item 3 call for net interest, or interest?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): Now, on Exhibit 279, that is the identified items of unreported income of Mr. Hans Forster, prepared by Mr. Holtberg, we have for 1945 additional dividends and interest, $10,808.41. You knew nothing [3734] about any of these items? A. I did not.

Q. Included here are personal loans. You knew nothing about those? A. I did not.

Q. Pickering loan.

A. I knew nothing of the Pickering loan.

Q. There is an item here, Arctic Gardens, $723.21. Did you know about that?

A. I knew about it. I wrote the check to him.

Q. Why wasn't it included?

A. I assumed it was.

Q. You assumed it was? A. Yes.

Q. Yet, you did not check?

A. I was not keeping his books.

Q. And then in 1946, we have an item of $6,194.62 additional interest. You knew nothing about that? A. I did not.

Q. 1947, $5,742.44 additional interest. You knew nothing about that? A. I did not.

Q. You declared in that year $1600 and it was actually, according to Mr. Holtberg's computation, [3735] $7300. Less than one-fourth declared in that year. You knew nothing about that?

(Testimony of L. Hicks Taylor.)

A. I did not.

Q. Similarly, in 1948, $4,641 undeclared interest. You knew nothing about those? A. No.

Q. And in 1949, $5,337.35 of undeclared interest, consisting of 2, 4, 6, 8, 10, 12, 14, 16, 18, 22, 24, 25 personal loans, savings account, Government bonds, and the Issaquah Creamery Company loan. You knew nothing about those?

A. Part of those must have been on the tax return, the Government bonds.

Q. You believe you had included the Government bonds?

A. If you would show me the exhibit, I might—or the tax return—it might clarify it.

Q. This exhibit shows you show on your return $3,418.

A. It is here then, and taken care of, yes.

Q. That includes the Government bonds?

A. That included the Government bonds, yes.

Q. You were aware of the Issaquah Creamery Company loan?

Mr. LeSourd: Just a moment. From whom to [3736] whom?

Q. (By Mr. Obenour continuing): The loan of Mr. Forster to Issaquah Creamery Company. I believe you prepared the loan, did you?

A. In what way?

Q. Physically prepared the note that represented the loan? A. I did not.

Q. You did not? Were you aware of the loan?

A. It would appear in my ledger if I was.

(Testimony of L. Hicks Taylor.)

Q. Were you aware that Mr. Forster loaned money to Issaquah Creamery Company in 1945 that was carried throughout the entire 1945 to 1949 period?

Mr. LeSourd: Objected to as repetitious and argumentative.

The Court: Objection overruled.

A. The ledger shows notes payable, I believe, of fifty thousand dollars. Am I right on the amount?

Q. Yes.

A. But unless I was told I would assume it was from the Peoples Bank.

Q. Did you know Mr. Forster loaned Issaquah Creamery Company fifty thousand dollars?

A. I cannot recollect whether he did or not.

Q. But you knew that there was a loan then of fifty thousand dollars?

A. The ledger showed a loan of fifty thousand dollars.

Q. That would be the interest, would it not?

A. To the what?

Q. To the bank. A. Yes.

Q. And interest would be paid then to Peoples —to the bank, whichever bank loaned the money?

A. Yes.

Q. Or to Mr. Forster? A. Yes.

Q. And in 1945, they paid $3600 to Mr. Forster. Did you know that? A. I did not.

Q. $1,850 in 1946. You didn't know that?

A. I have no information about it.

Q. $1,000 in 1947 and $3,000 in 1948, and $2,927

(Testimony of L. Hicks Taylor.)

in 1949. Was there testimony you prepared that note? Do you recall Mr. Forster so testifying?

A. Yes, but I did not prepare that note.

Q. You did not prepare that note?

A. No.

Q. Did you include the Directors' fees Mr. [3738] Forster received?

A. If he gave them to me, I did.

Q. You knew he was serving as a director?

A. Yes, I knew he was serving as a director.

Q. Would that be included in his net interest?

Mr. LeSourd: Objected to, your Honor.

Directors' fees wouldn't be interest. I object to the form of the question.

The Court: He may answer. It would seem that way, but the witness, I assume, can explain that.

A. He never explained to me that he had any Directors' fees, or ever gave me those figures separately.

Q. You never entered an item of Directors' fees?

A. I did not.

Q. So that the only way it could be was in this net interest? A. I presume so, yes.

Q. Is that included in your idea of net interest now? A. No.

Q. Why didn't you ask him about Directors' fees?

A. I asked him for all his income. [3739]

Q. You felt you had no duty above making this return out?

(Testimony of L. Hicks Taylor.)

A. A taxpayer has a greater duty to the accountant than the accountant has to the taxpayer.

A taxpayer knows what he earns, and should wilfully give the information to the accountant.

Q. And the accountant should prepare the tax return truthfully to the best of his knowledge?

A. That is right.

Q. And if you have knowledge that Mr. Forster also received Directors' fees, should that be included?

A. I did not have knowledge that Mr. Forster was receiving directors' fees.

Q. You knew he was a Director?

A. I did.

Q. And you knew Directors received fees?

A. And I knew that that bank for many years couldn't afford to pay directors' fees.

Q. You never asked him?

A. I didn't ask him, no.

Q. You didn't ask him then about any details, is that correct?

A. I expected him to prepare it for me.

Q. You took a figure of net interest and included in your mind directors' fees? [3740]

A. I don't know. I can't tell you that.

Q. Now, stock dividends—you included stock dividends in the tax returns from information you received at the end of the year from Jordan and Company, is that correct? A. Yes.

Q. And that information was supplied by Jordan and Company?

(Testimony of L. Hicks Taylor.)

A. Is I understand it, Mr. Jordan made him a complete copy which shows attached to the return.

Q. So that you included all the items of commercial stock that he owned?

A. I made an effort to report it correctly.

Q. And then, in these figures that we have gone into on 279, the interest on personal loans was not ever included then to your knowledge?

A. Why——

Q. (Interposing) In other words, we went into this additional figures of interest, do you recall?

A. Yes.

Q. And those consist of an addition to the commercial stock that paid dividends, and interest and returns of—there was not included then the interest on personal loans made by Mr. Forster?

A. Not to my knowledge. [3741]

Q. The corporation prepared 1099 to the Government for payment of stock dividends, do they not? A. Many do, yes.

Q. And those, then, go to the Government for comparison with the tax returns submitted by the taxpayer?

A. That is my understanding of it, yes.

Q. However, a private individual borrowing money from Mr. Forster would make no return to the Government for interest paid to Mr. Forster, would he? A. I doubt it.

Q. Why is it, then, that you included on the tax return of Mr. Forster only those items of interest and dividends of which the Government did have

(Testimony of L. Hicks Taylor.)

notice and did not include those of which the Government would have no notice?

Mr. LeSourd: Objected to. Conclusion and argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Why were only the commercial stock dividends shown which were reported to the Government? [3742]

Mr. LeSourd: Object to the form of that question. The testimony shows he asked for dividends and interest, and put down whatever figures were given.

The Court: I will overrule the objection.

The Witness: Would you repeat the question, please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. If my recollection is correct, Mr. Forster gave me his dividends from the Washington State Bank and Mr. Jordan listed the other dividends on his report and those were the ones reported on the return.

Q. (By Mr. Obenour): Why were not the personal loans included?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained. You mean interest? You said "loans".

Q. (By Mr. Obenour continuing): Interest on loans.

(Testimony of L. Hicks Taylor.)

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): How about farm rental? You [3743] knew that Mr. Forster owned a farm?

A. Oh, yes; I knew he owned a farm.

Q. You knew he built a barn? A. Yes.

Q. It took about eight months to build, according to the testimony. Were you aware on this date that the barn was being built?

A. I was not.

Q. But you were aware it was built?

A. Yes, I had an invitation to the barn dance.

Q. How did you believe it was being paid for?

A. I didn't know.

Q. You had no knowledge how it was being paid for? A. I did not.

Q. Did you think it was Mr. Forster's personal property? A. Yes.

Q. Did you know—you knew Mr. Forster wasn't living on it? A. That is true.

Q. You knew it was being occupied by someone?

A. No, I didn't know that.

Q. You knew it wasn't vacant?

A. I didn't know that, either.

Q. You believe then Mr. Forster would have [3744] built a barn on a farm and leave it vacant?

A. That I don't know.

Q. You never heard it discussed?

A. No.

Q. You never picked the barn up for depreciа-

(Testimony of L. Hicks Taylor.)

tion purposes as a capital asset at any time, did you?

A. I didn't know anything about it.

Q. You knew he had a barn?

A. Yes, I was invited to the barn dance. Didn't I tell you?

Q. Why didn't you ask Mr. Forster about how it should be handled for depreciation?

A. My own experience with barns has always been they ran in the red, so that I don't imagine I gave it much thought.

Q. Ran in the red?

A. Yes. My farm situation runs in the red all the time.

Q. Do you have yours rented?

A. No, I have not.

Q. You knew where Mr. Forster's farm was?

A. I haven't the slightest idea where his farm was.

Q. You never heard it discussed? [3745]

A. Not from an income standpoint, no.

Q. But you did hear it discussed?

A. I was invited to the barn dance.

Q. And past the barn dance, that is all you know about the farm? A. Yes.

Q. And the fact it was paid for out of expenses of Issaquah Creamery never came to your attention at any time? A. It did not.

Q. And the fact that Mr. Forster received regular rentals, going as high as fifty dollars a month, never came to your attention at any time?

(Testimony of L. Hicks Taylor.)

A. It did not.

Q. And it never came to your mind that this farm should be rented, and depreciated off the rental?

A. Mr. Forster's personal assets never came to my attention.

Q. When did you find—when did you find out?

Mr. LeSourd: I will object as repetitious.

Mr. Obenour: I am just asking for a date, if the Court please.

The Court: Is that all you want, the date?

Mr. Obenour: Yes, sir.

A. I do not recollect. [3746]

Q. (By Mr. Obenour): It was prior to the time you made a statement to Mr. Eppler?

A. Oh, yes; within the past five years, I think.

Q. You did make a statement to Mr. Eppler, I think, on May 16, 1951, in this building, in the presence of Mr. LeSourd and Mr. O'Leary and Mr. Eppler? A. Yes, I had such a meeting.

Q. Now, I will ask you if you were asked this question, and if you made this answer:

"Did you know that Mr. Forster owned a farm on which he derived income?

"Answer: I did not."

Did you make that statement and answer?

A. Yes.

Q. When did you find out he did have this farm, before or after this statement?

A. After this statement.

(Testimony of L. Hicks Taylor.)

Q. You found out after this statement he had a farm?

A. Let me correct you. So far as income is concerned on the farm.

Q. And you knew, according to the statement [3747] you made to Mr. Eppler, you knew about the farm, but didn't know about the income?

A. That is correct.

Q. And now, you know about the income?

A. Well, it has been discussed here.

Q. Well, these eight corporations and companies that have entered into this trial: Apex Farms, you were secretary-treasurer of that company?

A. I was so acting.

Q. And Alpine Dairy was a private company and you were the accountant on that?

A. That is correct.

Q. Simonson and Forster, you served as Secretary-Treasurer?

A. I believe I was only acting secretary there.

Q. Renton Ice and Ice Cream, you were secretary-treasurer?

A. Acting secretary-treasurer.

Q. You were secretary-treasurer?

A. Acting, yes.

Q. There were no others? A. No.

Q. Arctic Gardens, you were secretary- [3748] treasurer?

A. I actually was secretary-treasurer of Arctic Gardens.

Q. Issaquah Creamery Company, you were secretary-treasurer?

(Testimony of L. Hicks Taylor.)

A. No, I was acting secretary.

Q. Daisy Ice Cream?

A. Never had any connection with Daisy Ice Cream.

Q. Alpine Ice Cream?

A. I was acting secretary and treasurer there.

Q. Daisy later became Alpine?

Mr. LeSourd: I object.

The Court: I didn't get the last question.

Mr. Obenour: Daisy later became Alpine.

Q. (By Mr. Obenour continuing): The business of Daisy was later taken over by Alpine Ice Cream?

A. The operating end of the ice cream business was taken over by the Alpine Ice Cream Company, Incorporated.

Q. And Alpine Ice Cream Company, Incorporated, you were secretary-treasurer there?

A. I was acting secretary-treasurer, yes.

Q. Finstad and Utgard, you were secretary-[3749] treasurer there?

A. I was acting in that capacity there.

Q. When you say "acting", there was none other than yourself as secretary-treasurer in any of these companies?

A. When I say "acting", I was only acting at the pleasure of the owner of the business. I had no stock interest and did not function as a secretary-treasurer, only for the signing of papers.

Q. You simply signed without knowing anything further than that?

Mr. LeSourd: Objected to as argumentative.

(Testimony of L. Hicks Taylor.)

The Court: Objection overruled.

A. I don't believe I get your answer clear, Mr. Obenour.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing): I usually looked the articles over that I signed.

Q. (By Mr. Obenour): All of the duties there were as secretary-treasurer in all of the seven corporations in which Mr. Forster had an interest, you performed?

A. Performing the operation of Treasurer of a [3750] company is a very broad structure. A treasurer of a corporation who is actually functioning as a treasurer receives somewhat the same compensation as the president does, and he handles all the funds and has charge of them, and I did not have charge of any of the funds of any of these corporations.

Q. Who was president of these corporations?

A. Mr. Forster was president of part of them.

Q. Did he receive any pay from any of them as president? A. Not always.

Q. Did he receive pay?

A. But he did have executives who did receive.

Q. Did Mr. Forster receive pay of any corporation as president?

A. He did from Issaquah Creamery Company, eighteen thousand dollars a year.

Q. Were there any others?

(Testimony of L. Hicks Taylor.)

A. I do not recollect, right now.

Q. So then the duties of president could not be measured by the pay received, could they?

A. And similarly the position of secretary-treasurer fits the same.

Q. Exactly; so that you could not measure your duties by the amount of money received? [3751]

A. Yes, I could.

Q. You could?

A. Because I did not receive any money as an officer.

Mr. Obenour: It is recess time.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-morning recess. The Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:02 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:15 o'clock a.m. April 14, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor. [3752]

The Court: You may proceed, Mr. Obenour.

Q. (By Mr. Obenour): These eight companies were all separate companies in themselves, weren't they? A. Separate operations.

Q. Separate operations; I think you said Mr. Forster was president, and you were secretary and/or treasurer and they had general managers in each of those companies, is that correct?

A. As I recollect, Renton Ice and Ice Cream Company, Mr. Schneider was president. Simonson and Forster, Mr. Simonson was president.

Q. Those two were also general acting managers of those corporations?

A. They were the general managers; and Mr. Egeness was vice-president at Finstad and Utgard, and general manager; Mr. Chapman, I believe, was either vice-president or president at Apex Farms, and general manager; and Mr. Forster then was president of Alpine Ice Cream Company, Incorporated, and Issaquah Creamery Company, Incorporated, and he owned the Alpine Dairy.

Q. Mr. Schneider had no business dealings at all other than the management of the Renton Ice and Ice Cream? A. That is right. [3753]

Q. He had nothing to do with the affairs of Simonson and Forster? A. That is right.

Q. Or any other company?

A. That is right.

Q. And he had no occasion to deal with either

(Testimony of L. Hicks Taylor.)

Mr. Egeness or Mr. Simonson or Mr. Chapman, or any of the others that you have mentioned?

A. Well, the Renton Ice and Ice Cream dealt with the Issaquah Creamery Company and, I believe, the Alpine Dairy, too.

Q. But Mr. Schneider had no business dealings personally, or otherwise, with any of the other men you mentioned?

A. No, each one was a separate operation.

Q. And, similarly, Mr. Egeness and Mr. Simonson, each with their own company?

A. That is correct.

Q. And not had any contact with other than themselves? A. Not any material contact.

Q. And similarly with Mr. Keck, his job was strictly confined to Apex Farms?

A. Keck was the bookkeeper at Apex Farms.

Q. He had nothing to do with any of the others?

A. No.

Q. The only contact was that Apex Farms bought certain supplies from Issaquah Creamery Company for which checks were written?

A. That is as far as I know, yes.

Q. And they sent milk checks for the difference between the regular price and the surplus price? They bought the milk from Finstad and Utgard and sent the check to Issaquah?

A. They were purchasing back and forth by each other—from each other.

Q. But that was the extent of their dealings; there was no personal contact between them?

(Testimony of L. Hicks Taylor.)

A. That is correct.

Q. None of these companies ever declared any dividends at any time, did they?

A. Not during my experience with them, no.

Q. Yet, from the evidence, it is true, is it not, that Mr. Forster got money from each one of these companies that was concealed?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): It is true, is it not, that [3755] Mr. Forster received money in some form from each of these companies?

A. He——

Mr. LeSourd (Interposing): Just a moment, your Honor. I will object to it unless the companies are specified.

Mr. Obenour: Each of the eight companies I mentioned.

The Court: I think it is clear he is speaking of the eight companies. Objection overruled.

A. (Continuing): He received money from Puyallup, which has been explained, and also from Renton which has been explained.

Q. (By Mr. Obenour): Didn't he receive money from each of these companies which have been gone into in the evidence, so far, in some form?

A. As far as the evidence is concerned, I believe that is so.

Q. And isn't it true, also, that this money that

(Testimony of L. Hicks Taylor.)

he received from each of these companies was not reported by you upon the tax returns?

Mr. LeSourd: I will object to that, your Honor, as assuming it should have been reported, whatever he received. [3756]

Mr. Obenour: The fact it was or wasn't, if the Court please——

The Court: (Interposing) Objection overruled.

A. I don't believe I understand your question on that.

Mr. Obenour: Would you read the question, please, Mr. Reporter?

The Court: You might read the question, Mr. Reporter, and, Mr. Taylor, if you do not understand it as phrased, you may so state.

The Witness: Yes.

(Whereupon, preceding question was read by the reporter.)

A. The schedule that Mr.—that the man presented, shows a lot of added income. Is that the question you are trying out?

Q. (By Mr. Obenour): Well, do you understand? Do you want me to rephrase it?

A. I wish you would.

Q. He did receive money from each of these companies——

Mr. LeSourd: (Interposing) Just a moment. I will object here, your Honor, unless—— [3757]

The Court: (Interposing) You are speaking about income now?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: Money in some form as shown by the evidence.

Mr. LeSourd: It isn't clear whether he is asking the witness to testify what he heard at the trial or knew at the time. The question is completely ambiguous.

Mr. Obenour: He stated that he knows he has received money in some form. I am attempting to go back and ask the witness if this same money was not reported.

The Court: I think we should clarify it so that we will know what the witness is talking about, as well as counsel, so that I will sustain the objection as to the form of the question. It is vague.

Q. (By Mr. Obenour continuing): You heard the evidence presented, Mr. Taylor?

A. Through the case, yes.

Q. And it is true, is it not, that Mr. Forster received money in some form from each of these eight companies, and we can elaborate it—we will, as we go on.

Mr. LeSourd: Objection. [3758]

The Court: I will sustain the objection.

Q. (By Mr. Obenour continuing): Did you take part in a plan of—with Mr. Forster and Mr. Erickson for the evasion of taxes of Mr. Forster and Issaquah Creamery Company?

Mr. LeSourd: Objected to as repetitious. He asked the same question yesterday.

Mr. Obenour: I will ask it again, too.

Mr. Griffin: May the question be read?

(Testimony of L. Hicks Taylor.)

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Griffin: I object to the form of that question, because it assumes a plan between Mr. Forster and Mr. Erickson.

The Court: That is the same question that was asked yesterday, in substance.

Mr. Obenour: Yes.

The Court: And the Court's sustained objection to it.

Mr. Obenour: I don't believe so.

Mr. Griffin: It was answered yesterday, but it didn't have this assumption in it.

The Court: It strikes me as being—are you asking [3759] whether he admits the guilt, or not?

Mr. Obenour: Yes, sir.

The Court: He pleaded not guilty.

Mr. Obenour: Yes, sir. I asked him if he took part in any plan, from the testimony he heard, did he take part in any way in evading the taxes of Mr. Forster and Issaquah Creamery Company.

The Court: I will sustain the objection.

Q. (By Mr. Obenour): Mr. Keck kept the books at Apex Farms, is that correct?

A. Yes.

Q. And I believe you testified that you determined that his system set up was—he was all——

Mr. Obenour: Strike the question.

Q. (By Mr. Obenour continuing): You testified, I believe, Mr. Taylor, as to the—as to Mr.

(Testimony of L. Hicks Taylor.)

Keck—how did you describe him?—his caliber of his work?

A. I have forgotten now what I said.

Q. But you did——

Mr. LeSourd: (Interposing) I will object to this as repetitious.

The Court: I don't know what you are getting at, Mr. Obenour. You may proceed. [3760]

Q. (By Mr. Obenour continuing): You determined the competency of Mr. Keck at the time Apex Farms was formed, did you not?

Mr. LeSourd: Objected to as irrelevant and immaterial and repetitious.

The Court: Objection sustained.

Mr. Obenour: If the Court please, it is preliminary to the testimony that he had yesterday—simply going back to that testimony. We can't necessarily show each one of these positions in the same continuous order. We will have to break apart, and at which time there will be questions put to refer back to the previous testimony.

The Court: Of course, you used language and say he determined the competency. You are assuming something testified to, and I don't think, if it is objected to——

Mr. Obenour: (Interposing) If the Court please, I asked whether he described the caliber of Mr. Keck, and he said he couldn't remember, and I was attempting to paraphrase his testimony.

The Court: I will sustain the objection.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Did you testify as to the competency of Mr. [3761] Keck? A. Yes.

Q. And how did you determine his competency?

Mr. LeSourd: Objected to as irrelevant and immaterial, and to the form of the question, gone over before.

The Court: You mean, how did he determine that? Is that material?

Mr. Obenour: Yes, sir. I am going back to the testimony of the witness yesterday. It is simply——

The Court: (Interposing) If he can explain it, the Court will overrule the objection.

The Witness: Do you desire me to answer?

The Court: Yes. I understand the substance of the question is how you arrived at or how did you explain your answer when you testified you found him to be competent?

A. Mr. Keck was quite a thorough dairy man and the system he had established at the Apex Dairy of an operation from six to ten routes seemed very efficient to me, and I didn't see any reason for changing the system.

Q. (By Mr. Obenour): Did you determine him to be competent? [3762] A. Yes.

Q. And did you determine that he was honest in his work? A. So far as I know.

Q. He reported everything that went into Apex Farms in the form of receipts, and also of expenditures? A. As far as I know.

Mr. LeSourd: Objected to as irrelevant, and

(Testimony of L. Hicks Taylor.)

assuming that the witness knows every receipt was reported.

Mr. Obenour: So far as he knows; within his knowledge, was the question.

The Court: I believe he answered the question.

The Witness: Yes.

Mr. LeSourd: I didn't get the answer.

The Court: Do you want it read?

Mr. LeSourd: I would like to have it read.

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. Obenour): Now, the money that Mr. Forster received from Apex Farms was in the form of diverted checks from Apex [3763] Farms to Issaquah Creamery; do you recall that evidence, Exhibit 142? Handing you Exhibit 142, which has been identified as checks of Apex Farms payable to Issaquah Creamery Company and which were deposited to the personal savings account of Mr. Forster, 198, did you hear that testimony?

A. Yes.

Q. And that was the form, then, of the money that Mr. Forster received from Apex Farms; would you say that that was correct?

A. If the checks were deposited.

Q. Yes, that was the testimony of previous witnesses. Is that correct, that that was the form of the money that Mr. Forster received from Apex Farms?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: I will object to the form of the question, your Honor.

He answered the factual matter that he heard the testimony.

The Court: Do you understand the question, Mr. Taylor?

The Witness: I am trying to determine what he is trying to ask me.

The Court: I suggest you might rephrase the question, Mr. Obenour.

Q. (By Mr. Obenour continuing): Exhibit 142 reports $25,048 of [3764] checks payable to Issaquah Creamery Company, which, according to the testimony, was deposited to 198.

Do you agree then that that was the money that Mr. Forster received from Apex Farms?

Mr. LeSourd: Objected to as irrelevant, what he agrees; immaterial.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Do you have any statement to make contesting the fact that Mr. Forster received these checks from Apex Farms?

Mr. LeSourd: Object to the form of that.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Can you make any statement concerning the receipt of those checks by Mr. Forster?

Mr. LeSourd: May we have that question read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: I think it was "did you."

Q. (By Mr. Obenour continuing): Can you make any statement now concerning the receipt of those checks by Mr. Forster?

Mr. LeSourd: Same objection. [3765]

The Court: Objection sustained.

Mr. Obenour: If the Court please, they went into the examination.

The Court: It isn't material whether he can make any statement.

Q. (By Mr. Obenour continuing): Did you have any knowledge that those checks were being deposited to 198? A. I did not.

Q. They were normal business checks, so far as you knew, in the affairs of Apex Farms?

A. As far as I know.

Q. Did you examine the books to determine that they were written?

A. I did not. I did not audit the books.

Q. Did you know that they were written at all?

A. I did not.

Q. Were W-2's, or 1099's, prepared for any of those checks? A. I have no knowledge.

Mr. LeSourd: Your Honor, I will object, assuming they should have been.

Mr. Obenour: Whether they should or should not have been, the question is, were there? [3766]

Q. (By Mr. Obenour continuing): If there was any, explain.

Mr. LeSourd: A question like this, your Honor, carries the implication that they should have been,

(Testimony of L. Hicks Taylor.)

and if he wants to ask whether W-2's should have been prepared for an ordinary business transaction of this sort, we can do so.

The Court: What was the form of this question, Mr. Reporter?

(Whereupon, the following was read by the reporter:)

"Q. Were W-2's, or 1099's, prepared for any of those checks?

"A. I have no knowledge.

"Q. If there was any, explain."

The Court: Do you wish to strike it?

Mr. Obenour: We move to strike—it was answered.

Q. (By Mr. Obenour): The other privately owned business of Alpine Dairy, Mrs. Wilcox kept the books at that concern?

A. She was office manager, yes.

Q. And was responsible for the bookkeeping?

A. Responsible for it, yes.

Q. I believe you testified from time to time you would have dealings with the manner in which she kept [3767] the books?

A. Mrs. Wilcox and I installed the system in 1931 that was used down there.

Q. Did you have occasion to determine whether she was competent?

Mr. LeSourd: Objected to, your Honor, as irrelevant and immaterial.

Mr. Obenour: If the Court please, the man testified that the accountant received figures from these

(Testimony of L. Hicks Taylor.)

various bookkeepers. Certainly it would be relevant as to whether or not he received figures that were prepared accurately.

The Court: Well, the objection is overruled. Do you have the question in mind?

The Witness: As I understand the question, he wanted to know if I thought Mrs. Wilcox was competent?

Mr. Obenour: Yes.

The Witness: (Continuing) ——to do her work.

A. I always felt that she was very competent to do her work.

Q. (By Mr. Obenour): Did you have any occasion to believe that she was not honest in her work?

A. I did not.

Q. So far as you know, no occasion did she not report any proper receipts of the company? [3768]

A. I had no knowledge of her not doing it.

Q. And her work was connected strictly with the bookkeeping of the receipts rather than the expenditures of Alpine, is that correct?

A. Might I explain the Alpine a little bit?

The Court: Get the question. Do you have the question in mind, and then if you wish to answer, you may.

The Witness: Yes.

A. I answer the question "yes," but the Alpine Dairy was more or less like a branch. It operated the sales, and the acceptance of the revenues of the business, the receipts, all came to Alpine and were deposited in the Peoples Bank. The disburse-

(Testimony of L. Hicks Taylor.)

ments of that bank account were all made at Issaquah, like a branch institution.

Q. (By Mr. Obenour): Well, Mrs. Wilcox was responsible then for keeping track of all monies received by Alpine?

A. Monies, recording accounts receivable, and depositing the funds to the bank.

Q. And she did so to the best of your knowledge?

A. To the best of my knowledge, she did all of it.

Q. Mr. Erickson was responsible at the Issaquah office [3769] for the expenditures of Alpine Dairy, is that correct?

A. He was office manager at Issaquah.

Q. And under his supervision, all expenditures were made for Alpine Dairy?

A. So far as I know.

Q. And the records were kept at Alpine—the expenditure records of Alpine were kept under Mr. Erickson's supervision at Issaquah?

A. Yes.

Q. Now, there was testimony that, you recall, the Time Oil receipts chargeable to Alpine in the amount of $9,629—do you recall that testimony?

Mr. LeSourd: May I ask, your Honor, what counsel means by "chargeable to Alpine"?

Mr. Obenour: As I understand, there is a breakdown of the total receipts; some used by Alpine and some by Issaquah, and all distributed.

Mr. LeSourd: You mean income?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: It was distributed in the receipts, some part of it from the gasoline used by Alpine and for that by Issaquah Creamery Company, a breakdown of approximately $9,000 to $2,000.

The Court: Nine thousand to Alpine, is that what you are referring to? [3770]

Mr. Obenour: Yes.

Mr. LeSourd: Very well, your Honor.

Q. (By Mr. Obenour): You heard that testimony? A. I don't recall the amount.

Q. You heard that there was Time Oil receipts?

A. Yes, but I cannot recollect any amounts.

Q. Would this be properly entered on the books of Alpine of reducing the cost, or at least being considered income of Alpine?

A. If it was a rebate, it should have reduced the expenses of Alpine.

Q. Was this done?

A. That I do not know.

Q. According to the testimony, it was deposited directly to the account of 198. To your knowledge of the operation of Alpine Dairy, who would be responsible for this money being properly entered on the books of Alpine Dairy?

A. If the funds ever were in Mrs. Wilcox's hands, they went into the bank.

Q. And who would be responsible, from your knowledge of Alpine Dairy, that this money should be taken upon the books of that company?

A. Well, whoever received it. [3771]

Q. And if the testimony was that Mr. Forster

(Testimony of L. Hicks Taylor.)

received it, then you say it would be his responsibility that it should be reported?

A. It should have been reported to Mrs. Wilcox, so that it could be deposited.

Q. And similarly, there was testimony of the diversion of checks payable to Alpine Dairy in the approximate amount of $21,700 which, according to the testimony, were not recorded on the books of Alpine but went into account 198. Do you recall that testimony?

A. I remember something but it is not clear to my mind, the amount.

Mr. LeSourd: Excuse me. Which checks are these, may I inquire?

The Court: The checks aggregating twenty-one thousand?

Mr. Obenour: Yes, $21,700.

Mr. LeSourd: It is a little ambiguous.

The Court: I understand you are breaking this down, are you, Mr. Obenour?

Mr. Obenour: Yes, sir. That included Exhibits 66, 66-A, 67, 67-A, and broken down by years if you desire.

Mr. LeSourd: Which companies?

Mr. Obenour: These were checks payable [3772] to Alpine Dairy, which were diverted to 198.

Mr. LeSourd: From whom?

Mr. Obenour: Various drawers.

The Court: They are covered entirely by these exhibits, is that it?

Mr. Obenour: Yes, sir.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: If the Court please, Counsel is not a witness in this case. It is what the witness on the stand knows. We don't know whether Counsel's breakdown—there is no evidence of his breakdown. Counsel sitting at this table for three months don't know if his breakdown is correct.

I object to the form of the question.

The Court: Objection is sustained to the question. Now, Mr. Obenour is in the process of formulating another question. Is that it?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): We have one, two, three, four, five, six, seven, eight, nine, ten, eleven exhibits, all of which are a series of checks. For the purpose of saving time, it has been computed before.

Mr. Obenour: If they want to take the time now——

The Court: (Interposing) I think you should refer [3773] to the exhibits.

Mr. Obenour: Yes, sir.

Mr. LeSourd: And, if your Honor please, these are discount checks from various sources chargeable to Alpine Dairy.

The Court: Well, Mr. Obenour, if you will frame a question now.

Mr. Obenour: Yes, sir.

The Court: And then, if there is an objection, it may be made.

Q. (By Mr. Obenour continuing): You heard the testimony, did you not, pertaining to Exhibits

(Testimony of L. Hicks Taylor.)

66, 66-A, 67 and 67-A which were primarily discount checks that were charged as expenditures on the books of Alpine as being paid as discounts to customers, but which were in fact returned to Issaquah and then deposited in Account 198. Do you recall that testimony? A. Yes, I recall it.

Q. And do you recall——

Mr. Obenour: We can give the totals by months, or add them up.

Mr. LeSourd: That is all right. I didn't know what you were talking about. [3774]

Q. (By Mr. Obenour continuing): And we have the Northwest Basketball Tournament check included in 67, equipment sales included in exhibit 250, check of Arctic Gardens in exhibit 239, and 253, and checks to Cook and Grant, 124—$27,159 in my calculation.

You heard that testimony?

Mr. Griffin: Just a moment. I haven't heard that testimony. I object to the form of the question.

The Court: The form of the question is improper, Mr. Obenour, insofar as you include in it matters that aren't testimony—that aren't in evidence.

Mr. Obenour: Pardon?

The Court: The Court will sustain the objection. You have to reformulate it, if you wish to put it.

Mr. Obenour: I would ask the Court—the way it would be—to have this witness add that up. Would Counsel accept the figures?

(Testimony of L. Hicks Taylor.)

The Court: You want him to add up the amount of the checks?

Mr. Obenour: I would attempt to ascertain that —the total.

Mr. LeSourd: The totals of various categories were [3775] given on Exhibit 279.

The Court: Why don't you refer to the item 279, then? Is it all there?

Mr. Patten: Yes, sir; at least, much fewer figures to total.

Q. (By Mr. Obenour continuing): Handing you Exhibit 279, the computation of the net worth for identified items of Hans Forster, and referring to the sections of interest of Alpine Dairy of each of those years, do you see those figures?

Mr. LeSourd: You are referring to the item "B," business income?

Mr. Obenour: I believe it changes year to year.

A. Dividends and interest?

Q. (By Mr. Obenour): Referring now to business income, Alpine Dairy, item D of 1945, the testimony was, do you recall, that they were deposited to 198; do you recall that?

Mr. Cox: All of the items in "A" and "B"?

Mr. LeSourd: I will object to that question.

Mr. Obenour: No, that includes both of them.

Q. (By Mr. Obenour continuing): The checks received of Alpine [3776] Dairy, discount checks included in Item "D," and item "E" of 1946, of cash discount checks, sub-section "C," "D," and "E,"

(Testimony of L. Hicks Taylor.)

and "F," 1947, paragraph "E," sub-paragraph "C," "D" and "E."

Mr. LeSourd: If your Honor please, may I say this? If the object of Mr. Obenour is to get a total of certain items in this exhibit, if the Government will total them up and bring in the total, we can shorten time by agreeing to it.

The Court: Well, is it material that we have the total?

Mr. Griffin: If he will state what he is trying to prove, maybe we can agree to it.

Mr. Obenour: That was my first question, Counsel—it was the fact that $21,000 was not deposited to 198 and objection was made.

Mr. Griffin: The proper question is, if you want him to testify those checks were or were not deposited to 198—it has been stipulated since the beginning of the trial they were—what is the issue?

Mr. LeSourd: Furthermore, it would be what this witness heard at the trial.

Mr. Obenour: That was the question put to him, if he heard the testimony.

Mr. Griffin: That would be immaterial. [3777]

The Court: Objection to those were all sustained. What is the question now?

Q. (By Mr. Obenour continuing): From your knowledge, Mr. Taylor, of the operation of Alpine Dairy, whose responsibility was it that these books —that these checks they deposited to 198 should be recorded on the books of Alpine Dairy?

Mr. Griffin: Well, I object to the form of that

(Testimony of L. Hicks Taylor.)

question. Apparently he is using this man as an expert witness.

Mr. LeSourd: Furthermore, I will object because we don't know what checks he is talking about. There may be a difference. Some of the checks may have been at Issaquah, and some at the Seattle office. It is a little vague.

The Court: If the witness understands the question and can answer it, he may. And may offer an explanation, if he desires.

Yes?

Juror Number Seven: Is the jury supposed to know what the question is?

The Court: The presumption is that.

Juror Number Seven: It is hard for us to understand the question. I am lost in the question.

The Court: I think that is a matter that counsel should bear in mind in asking questions.

Mr. Obenour: Yes, sir.

The Court: I will ask the witness if you understand the question, Mr. Taylor?

The Witness: May I ask this:

As I understand his question, he wants to know who was responsible to see where these checks were deposited, if I heard his question correctly.

The Court: If you know.

A. I do not know.

Q. (By Mr. Obenour continuing): Did you have knowledge——

The Court: (Interposing) Just a moment. If the jury should be confused on some of these mat-

(Testimony of L. Hicks Taylor.)

ters and feel it is necessary to stop and ask a question and suggest a question be put, that is your privilege if you wish.

Juror Number Seven: I didn't know that.

The Court: Generally speaking, you can't do that or we would never finish, but if you feel there is something you want to know about, or can't understand, if you will indicate, and if it is related to the matter the witness is testifying about, we will do so, but we can't go on that way as a [3779] general proposition.

Q. (By Mr. Obenour continuing): Did you have knowledge that any of these checks entered into evidence were being deposited to account 198 and not properly handled on the books of Alpine Dairy?

A. I think I so testified that I did not.

Q. Do you recall the testimony of Mr. Eppler as to the expenditures, personal expenditures, of Mr. Forster, which were charged as the expenses of Alpine Dairy?

A. I remember his testimony, yes.

Q. Who was the person responsible for the manner in which those expenditures were charged, to your knowledge of the operation of Alpine Dairy?

A. Well, the office manager at Issaquah.

Q. And that was whom?

A. Mr. Erickson, I presume.

Q. Did you have any knowledge that any of these checks were being so charged as expenses?

A. I did not.

(Testimony of L. Hicks Taylor.)

Q. You did check the drawing account of Mr. Forster each of these years at Alpine Dairy?

A. I did not check the drawing account. My ledger account showed the amounts charged to Mr. Forster. [3780]

Q. And there were only the income——

A. (Interposing) Income tax payments.

Mr. Obenour: 217, 18, 19, 21, 22.

(Whereupon, documents were handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Simonson and Forster —there were two girls that kept the books there during the period 1945 to 1949, is that correct, Miss Corliss and Miss Buchanan?

A. I believe that is correct.

Q. You discussed the bookkeeping system with them, I believe you stated?

A. They were taught the work by the preceding girls, and if there was any problems, they generally discussed them with me.

Q. They did discuss problems with you?

A. To some extent, yes.

Q. And you received certain information from them which you posted on a ledger?

A. The journals were complete, and I posted them to the ledger each month.

Q. Did you determine that the information was accurate?

Mr. LeSourd: I will object, your Honor. [3781]

His testimony is already in that he took the figures from the books and made no audit or deter-

(Testimony of L. Hicks Taylor.)

mination of the assets.

The Court: It is cross-examination. He may answer. Objection overruled.

Do you have the question in mind?

The Witness: Could it be read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. I did not audit the journals. I accepted the figures as presented.

Q. (By Mr. Obenour): Did you have any occasion during the period 1945 to 1949 to find that their information was incorrect?

A. No, I did not.

Q. Mr. Forster received $100 a month from Simonson and Forster, generally, in the years of 1948 and '9, as I understand the testimony. Is that correct?

A. That—checks were paid to him, yes.

Q. Were you aware he was receiving that money? A. Yes.

Mr. Obenour: 221 and 222? [3782]

(Whereupon, exhibits were handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Handing you Exhibit 221 and 222, I believe you stated you had no knowledge of the first two $100 checks, on Exhibit 221?

A. That is correct.

Q. And the balance of these checks then are the checks paid monthly to Mr. Forster from Simonson and Forster? A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. (Continuing) In the years 1948 and 1949? When did the regular monthly payments begin?

A. February 24, 1948.

Q. Did you know as soon as those payments to Mr. Forster began?

A. I am not positive of that.

Q. Did you hear the testimony of the girls that they were—Miss Buchanan and Miss Corliss as to the manner in which they were instructed how to charge those checks on their books?

A. I have some recollection of it, yes.

Q. And do you have knowledge yourself of how those were being charged at the time?

A. If I remember correctly, Mr. Simonson asked [3783] me where to set up these checks, and I informed him that until Mr. Forster and he had determined what the purpose of the checks were, to place them in the expense column on the Simonson and Forster journal so that they would be picked up each month.

Q. Were they entered as wages as they went along?

A. They were not. They were entered in the expense column, and as I remember it, I made most of the distribution, and charged them into the general expense account.

Q. Then you did go into the books on this occasion? A. Just the one item.

Q. But you did go into the books kept by the girls of Simonson and Forster to make this one entry? A. Yes, I made the distribution.

(Testimony of L. Hicks Taylor.)

Q. Were there any other times you had occasion to go into the books of the bookkeepers you were supervising?

A. Not necessarily.

Q. But you did on this occasion?

A. I didn't go into the books. I made an analysis of a column, is all. They were all entered. [3784]

Q. And you made the entry?

A. I made the analysis of the one column, yes.

Q. And you entered $100 to general expense?

A. To general expense, and there are exhibits here that will display how I did it.

Q. Now, was the occasion of Mr. Forster's receiving this $100 when Mr. Simonson raised his salary from four to five hundred?

A. That is my recollection, yes.

Q. And after you determined that Mr. Simonson had raised his salary from four to five hundred, you went to Mr. Forster and told him about it?

A. I don't know that I officially told him. I mentioned, probably, that the firm was not doing so well, and that additional salary seemed a little out of line.

Q. But you did tell Mr. Forster, as soon as Mr. Simonson raised his salary from four to five hundred dollars?

A. I am not sure I told him at the time.

Q. If Mr. Forster so testified, would you say he was not correct?

A. I would say he was correct, that I told him, but when I told him, I wouldn't know. [3785]

(Testimony of L. Hicks Taylor.)

Q. Did you hear Mr. Forster's testimony as to that matter? A. I believe so, yes.

Q. And do you recall that he testified that when you found that Mr. Simonson had raised his salary from four to five hundred dollars, you so reported to him, and he went out and saw Mr. Simonson?

A. I heard that testimony, yes.

Q. Would you say that was correct?

A. Reasonably so, yes.

Q. And he did see Mr. Simonson and he did begin receiving $100 a month, is that correct?

A. Yes.

Q. And then, as I understand your testimony, you went to Mr. Forster and discussed this money that he was receiving at the end of the year?

A. At the end of the year, yes.

Q. And Mr. Forster stated that he did not see why he should have to pay tax upon it if it was a draw on capital, is that correct?

A. That is reasonably so, except that he felt that a losing corporation—they could not afford to draw salary from and would have to return that money to the corporation.

Q. He was receiving $100 a month? [3786]

A. It was never determined what the $100 a month was for.

Q. He was receiving $100 a month?

A. You have the absolute evidence right here.

Q. Will you just answer the question, please, Mr. Taylor; yes or no? A. Yes.

Q. And after the end of the year, you then had a discussion how it should be carried on the books,

(Testimony of L. Hicks Taylor.)

and he stated that he shouldn't pay tax on it; that is correct, is it not?

A. He felt he shouldn't pay tax on it, yes.

Q. And as a result of that, he instructed you——

(Whereupon, there was a brief pause while the air raid sirens sounded.)

Q. (Continuing) At the time Mr. Forster caused you to see Mr. Simonson, that he had a manner of handling this; is that your testimony?

A. Not a manner of handling it, that they had apparently some agreement among them, how they would handle it, between them.

Q. But you did then receive an analysis that you described as equipment?

A. A slip describing some of this, as I [3787] remember it.

Q. Do you have that slip?

A. No, I do not.

Q. What is your best recollection of what that slip contained?

A. It seems to me that, from memory, it was eleven hundred and twelve hundred dollars written on it.

Q. Anything else?

A. I do not recollect.

Q. Just two figures, eleven hundred and twelve hundred dollars?

A. As I remember it.

Q. Was there any explanation of the eleven and twelve hundred dollars?

A. Mr. Simonson explained it, yes.

(Testimony of L. Hicks Taylor.)

Q. Did you follow the explanation?

A. I followed the explanation.

Q. And what was this eleven and twelve hundred dollar figure?

A. As I recollect, the eleven hundred dollars was in notes receivable, due the company from Mr. Simonson and twelve hundred dollars was the amount paid Mr. Forster.

Q. Had Mr. Simonson received eleven hundred dollars from the company? [3788]

A. As I recollect, that loan was one that had been made a few years before, and was a declining balance of that moment.

Q. The company made a loan to Mr. Simonson for eleven hundred dollars years before? Will you explain that, please?

A. As I remember the transaction, about 1940 Mr. Forster and Mr. Simonson withdrew five thousand dollars apiece and gave the company notes for it, and then they were paying it back in different amounts, and there was eleven hundred balance, as I remember, still owing by Mr. Simonson.

Q. And was there a balance still owing by Mr. Forster?

A. To the best of my recollection, he had paid his up.

Q. Well, then, the twelve hundred dollars represented the amount Mr. Forster received monthly from the checks?

A. That is my recollection of it.

(Testimony of L. Hicks Taylor.)

Q. Then what did they have to do with equipment?

A. I believe I testified that Mr. Simonson said that this equipment had been paid for by him and was going to be—he was going to collect a portion [3789] of it from Mr. Forster.

Q. What equipment?

A. Well, equipment.

Q. Well, you have another two figures on there, and one is explained as being a loan in 1940 from Mr. Forster, and the other is twelve hundred dollars Mr. Forster received. What equipment are we talking about?

A. I am sorry I am confusing you. The figures were combined into twenty-three hundred dollars.

Q. All right, what did the twenty-three hundred dollars represent? A. Equipment.

Q. What equipment?

A. I am afraid I don't know the equipment of a dairy well enough to tell you what equipment.

Q. What could a loan from Mr. Simonson and money advanced to Mr. Forester have to do with any equipment?

A. If Mr. Simonson paid for $2300 of equipment that was not entered on the books, this item of accounts receivable or notes receivable could be transferred into equipment to offset the two items. Is that clear to you?

Q. When was this equipment given to — or [3790] purchased by Mr. Simonson?

A. During that period.

(Testimony of L. Hicks Taylor.)

Q. What period? A. 1948.

Q. Why was it not entered on the books at that time? A. It was on the books.

Q. It was on the books?

A. It was on the books, but not under the equipment account.

Q. What was it under?

A. $1200 was under general expenses, Mr. Forster; $1100, under notes receivable under Mr. Simonson.

Q. And you mean that money received by Mr. Forster was entered as equipment under general expenses in 1948?

A. I am afraid that from an accounting standpoint, that puzzles you.

Q. Yes.

A. I will go from the start of it. The $1200 that Mr. Forster had been paid, had been restored to profit and established as a receivable, for an asset.

Q. How was that done?

A. Of the Puyallup Creamery. It was done on the [3791] ledger of the company.

Q. That was a ledger kept by you?

A. That is right.

Q. And you made the entry?

A. I made the entry, and on my work sheet, it shows it very plainly, what was done.

Q. And this was included—this is the explanation of the $2300. Will you go ahead, please?

A. That is correct.

Q. Now, how did that become equipment?

(Testimony of L. Hicks Taylor.)

A. The closing of the account, from accounts receivable or notes receivable, and being credited to notes receivable and a debit to the equipment account.

Q. Doesn't it have to represent some physical equipment?

A. It does represent physical equipment.

Q. What physical equipment?

A. I don't know, because I don't know dairy equipment well enough to point to it.

Q. Now, you received a slip of paper with eleven hundred and twelve hundred on it, totalling $2300, so you take the $2300 out of expenses and change it over to equipment when that $2300 represents a loan from Mr. Simonson and money paid to Mr. Forster, is that correct? [3792]

A. Maybe, as I explained, that Mr. Forster's $1200 was converted into an asset of the Puyallup Creamery by restoring it to profit.

Q. Did that represent equipment?

A. I said it represented an asset.

Q. Is that equipment?

A. It was when it was finally transferred into equipment.

Q. Then it was equipment by means of your entry upon the ledger of the Puyallup Creamery?

A. That is correct.

Q. And the only reason $1200 to Mr. Forster represented equipment is because you made the entry?

A. I think you are drawing it a long way.

(Testimony of L. Hicks Taylor.)

Q. Yes, yes; will you explain how $1200 represented equipment?

A. Mr. Simonson paid for this equipment outside of the business, was my information. He paid out $2300. The assets on the books of the Puyallup Creamery showed that they had $2300 coming from Mr. Forster and Mr. Simonson in the amounts of $1100 from Mr. Simonson and $1200 from Mr. Forster.

Mr. Simonson said that those items were equipment, to transfer it from the notes receivable account to the equipment account. [3793]

Q. And this equipment, you say you know nothing about it at all?

A. I don't know what the equipment was that he purchased.

Q. How do you know then it was acquired in 1948?

A. That was the year the transaction took place.

Q. How do you know it was acquired in the year 1948?

A. Because of the year of the transaction.

Q. That was the year you made the entry at the end of the year?

A. That is right, and that was the year of the transaction.

Q. How do you know it was the year of the transaction?

A. Well, Mr. Simonson gave me the figures.

Q. Mr. Simonson gave you two figures totalling $2300? A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. And that represents equipment?

A. Because he said they purchased the equipment. I had no reason to dispute his word.

Q. This was not taken out of wages; it was taken [3794] out of general expenses?

A. I will explain.

Mr. Simonson, when he started issuing the check to Mr. Forster, said they had not determined the purpose of that check.

Q. What was that again, now? I am sorry.

A. They had not determined the purpose of the check.

Q. And it wasn't then—that was in February when this started? A. That is correct.

Q. And it took them from February to November to determine that those checks represented equipment, is that correct?

A. (Whereupon the witness laughed.)

Q. When did they determine that those checks represented equipment?

A. At the close of 1948.

Q. After Mr. Forster said he did not want to pay tax on that money?

A. It was the decision of the two.

Q. You were fully aware of it?

A. I was present, yes.

Q. How did you set up the depreciation rate on the equipment if you didn't know what it was?

A. The depreciation rate of most dairy equipment is fairly normal. There is nothing unusual about it.

(Testimony of L. Hicks Taylor.)

Q. How did you set up the depreciation, if you didn't know what it was?

A. About a ten per cent basis.

Q. So then you depreciated the $1200 Mr. Forster received at ten per cent?

A. I cannot say until I see the record.

Q. What were these entries that you made, Mr. Taylor, before this item?

A. Mr. LeSourd had a schedule "D" that we went over.

Q. 220, that is the ledger kept by you for Arctic Gardens? A. It isn't Arctic Gardens.

Q. Puyallup Creamery; will you show us where you made this entry at the end of 1948?

The Court: What is the number of that exhibit?

Mr. Obenour: 220.

A. There are two entries of equipment.

Q. (By Mr. Obenour): Will you hold it up so that the jury might see, also? [3796]

A. There is an entry of equipment of $3,722.16, which is composed of $1100, $1200 and $1,422.16, which made the total of $3,722.16, transferred from the work sheet that you saw me testifying from yesterday.

Q. Now, you made an entry then of $3700 which you say included the $2300 and another item. What was the other item?

A. That I do not recollect.

Q. But you do remember that the $3700 included $2300?

(Testimony of L. Hicks Taylor.)

A. I have worked it over here so many times I know what the figures are.

Q. But you only remember those two, the $2300 total?

Mr. LeSourd: I will object to that. He testified those figures came from the worksheet.

Q. (By Mr. Obenour continuing): Well, where did you get the figure for the work sheet, then?

A. Will you obtain that work sheet, and we will look at it?

Mr. Obenour: Do you know what the exhibit number is?

The Clerk: It is 12:15.

The Court: Should we recess now, Mr. [3797] Obenour?

Mr. Obenour: We might as well, yes.

The Court: Ladies and Gentlemen of the Jury: We will now recess for noon. The Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

You may now be excused until 1:45.

(Whereupon, the jury retired from the courtroom.)

(Whereupon, at 12:15 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:52 o'clock p.m. April 14, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Testimony of L. Hicks Taylor.)

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor. [3798]

The Court: You may proceed, Mr. Obenour.

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): I believe I had asked you if you could show me how you recorded this transaction in the ledger for Issaquah Creamery, Exhibit 220.

Mr. Cox: Simonson and Forster.

Q. (By Mr. Obenour continuing): Simonson and Forster, pardon me.

(Whereupon, document was handed to the witness by Mr. Obenour.)

Q. (Continuing) Now, would you show us, please, what entries you made to adjust for the equipment?

A. May I have the work sheet that you were going to have with this before lunch?

Q. Are you unable to tell from the books you kept what the entries are?

A. No, I am not.

Q. Well, do they correctly show in the books that you maintained what the entries are?

A. They show the item of $1100 and $1200 taken care of in a combined item of $3,722.16.

Q. What you are saying is an item of $3,722.16

(Testimony of L. Hicks Taylor.)

is entered in equipment for 1948, is that correct?

A. Yes.

Q. Is there any other entry that pertains to this in your ledger that you kept, Exhibit 220?

A. That pertains to that? Here is an entry for $1100 which eliminates the note receivable of $1100 owing by Mr. Simonson.

Q. What is the date of that entry of $1100 on notes receivable?

A. It is December 31, 1950.

Q. Where do you see the date December 31, 1950?

A. That is supposed to be "31." It looks like 11 more than 31.

Q. Is there any month given there?

A. No, no month.

Q. Is there any date given there?

A. It appears to be "11" and would be March, according to that.

Q. It would appear to be March 11th that the entry is made?

A. It would appear that way, but it was not made until the end of the year.

Q. And either the date is correct—rather, the date is wrong, and your recollection is wrong there?

A. My recollection is right, December 31st.

Q. Why would the date March appear, then?

A. Apparently in the rush I did things too fast.

Q. That is $1100 in an item, recording of a $1100 note receivable, is that correct?

A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. But that is included in your December 31st entry? A. An adjustment.

Q. Adjusting $3,722? A. Yes.

Q. Now, what is the balance of the $3,722; how is the balance of that figure handled in your ledger?

A. May I have the work sheet, please?

Q. Are there any other entries that you can read in your books without the use of your work sheet showing that entry of $3,722?

A. Yes, there is an adjustment to supplies here.

Q. Where is that, please?

A. That is entered in red, a reduction of the amount in $1,759.58.

Q. And that is where, please? [3801]

A. Right here and right there.

Q. And that is made after the last figure of supplies, column 5, for—what do you call this, expense control?

A. Expense control ledger sheet.

Q. This was kept by you?

A. That is right.

Q. And there was a $1,759.58 item subtracted from the total of column 5, supplies?

A. That is correct.

Q. Now, where was the other figure, then? I would like to have you show it on the books, if you can.

A. In other words, the books and this work sheet are a combination that must be used together.

Q. Then the ledger you keep does not show this entire transaction?

(Testimony of L. Hicks Taylor.)

A. It shows the entire transaction.

Q. But you have to use the work sheet yourself to find out what this entry is, is that correct?

A. I asked you for it.

Q. Well, would you please answer my question?

The Court: Mr. Taylor, he is asking you, is it necessary to use that?

A. It is not necessary. I might explain this——

The Court: (Interposing) I think that is all.

A. (Continuing) ——that you sometimes combine figures.

The Court: You, of course, may explain.

Mr. Griffin: While he is looking at that, may I inquire the year of the March 11th date?

Mr. Obenour: 1948.

The Court: Does that appear——

Mr. Obenour: (Interposing) Yes, sir.

The Court: ——on the book?

Mr. Obenour: Yes, on the sheet itself.

Mr. Griffin: Thank you.

A. (Continuing) On my work sheet. I have an entry of $1100 in the elimination of an obligation to Mr. Forster, or to Mr. Simonson, in notes receivable.

Q. (By Mr. Obenour): Where is that, please?

A. That entry is right here in the adjustment column to the credit of notes receivable.

Then I have an entry of $1100 to the credit—to the debit of equipment.

Q. Isn't that in the inventory column?

A. Well, this is the adjustment. It carries

(Testimony of L. Hicks Taylor.)

through on this whole thing. If you notice, the total [3803] comes across into equipment, and does not affect the inventory figure.

Q. Where is that, please?

A. Because of the lack of space here, it appears to be in inventory, but it is in equipment, and carried across here into this total.

Q. And then this $1100 is the equipment figure?

A. Yes, sir; carried into the total of a new balance of equipment.

Q. Although it shows in the inventory line?

A. Yes, because of the space.

Q. Then there is no entry in your ledger of that $1100? Well, that is the one you say reduces notes receivable in your ledger?

A. That is correct.

Q. And the $1200?

A. The $1200 is shown as a credit to expense control down here. Expense control is entered in one lump figure of $178,344.62, and as you come down here, you will find there are three adjusting figures opposite the expense control. There is an item of $1200 which are the amounts drawn by Mr. Forster. There is an item of $6,677.04 which is an equipment item to the credit of the expense control. There is an item of $1,759.58 to the credit of the expense control [3804] reducing that figure in the profit and loss statement to $168,770.70. In other words, all those items have been restored to profit.

Q. Now, that is an adjustment on your work sheet?

(Testimony of L. Hicks Taylor.)

A. On my work sheet, which is reflected in the ledger in some combined figures.

The Court: What is the exhibit number? Excuse me, a moment.

Mr. Obenour: Exhibit——

The Witness: (Interposing) I couldn't see it there.

Mr. Obenour: 226.

The Witness: I am reading from Exhibit 226, yes. The second page of Exhibit 226.

Q. (By Mr. Obenour): Now, that is your explanation of the $3,722 then as you use it on the work sheet. Where is the entry on your ledger of the $1200?

A. There is an entry here of $7,877.34 in this equipment column here, and there is $1200 shown up here as added into the equipment column here.

Mr. Griffin: And that is what, again, please?

The Witness: That is the $1200 paid to Mr. Forster. [3805]

Q. (By Mr. Obenour): Now, the last figure of any of these columns in your expense control is the total of all the entries you made throughout the entire year? A. That is correct.

Q. So this $7,877.24 is the total of all the entries that is in the equipment column?

A. That is right.

Q. And you make a figure, adding each succeeding month, is that it?

A. That is right; you bring it forward.

Q. What do you call that?

(Testimony of L. Hicks Taylor.)

A. That is bringing your monthly totals forward, accumulation of figures, month to month.

Q. Is that a footing?

A. Footing, that is correct.

Q. So that there is actually an entry in ink, which is that month's entry?

A. That month, yes.

Q. And the figure for the month shows the total?

A. Yes.

Q. And where is this $1200 included?

A. It is included in the grand total. I wrote it in there because of lack of space. It is in [3806] this grand total here.

Q. Included in this grand total?

A. Yes.

Q. This is $612?

A. Yes, that was sent in that month.

Q. And then each of these months are added, and then at the end, you came along and——

A. (Interposing) You transfer it out of the expense control account into equipment account.

Q. And where is your removal from expense control?

A. Right here, $7,877.34. It is a credit. This debit and credit column. That is in the credit column, reducing expense control.

Q. And you made no adjustment to wages in that year?

A. Yes, it would be made in an adjustment to wages, because an adjustment was made.

Q. Well, what was the adjustment to wages?

(Testimony of L. Hicks Taylor.)

A. There wasn't any wages. I beg your pardon, Mr. Obenour. There was no charge set up to wages. It was set up to the general expense account.

Q. Then you did not lower wages in the months of 1948? A. No, not at all. [3807]

Q. Do you have a paper and pencil handy there?

A. Yes, I do.

Q. Now, as I understand it, each one of these columns in your expense control, each month is the same—the month's entry is added to the previous month's total, and there is a footing which includes those two totals?

A. Yes, that is the way the book operates.

Q. Would you please add the figures, $26,098.98 and $2,600.95. What is your total, please?

A. $28,699.93.

Q. And would you please add $6,460.01?

A. Anything else?

Q. $325.35. A. Yes?

Q. What does that total? A. $35,485.29.

Q. No, pardon me, just the last two figures separately, $6,460.01 and $325.35?

A. $6,785.36.

Q. I call you attention to the wages column for 1948 on your expense control and ask you to read the footing in the month of November. What is that? A. $27,499.93.

Q. The total of the preceding month, please, for November? [3808] A. $26,098.

Q. And that is the figure you had first?

A. Yes.

(Testimony of L. Hicks Taylor.)

Q. And then for the month of November, you do add to that? A. $2,600.95.

Q. And your total there when you added them was what? A. $28,699.93.

Q. And then what figure do you show for the end of November, 1948?

A. $30,884.92.

Q. No, for the end of November, 1948?

A. $27,499.93.

Q. And you are adding the two figures in the book, and there is how much difference between what you added there?

A. The difference is $1200.

Q. What was that $1200?

A. That—I must apologize to you. I thought I looked at this and didn't see that deduction. The $1200 is reduced from wages, and $1200 added to the equipment account.

Q. And I will ask you—then, there was a change in your wages for 1948? [3809]

A. Yes, there was.

Q. And was there any notation in your ledger to show that?

A. Yes, this is the ledger.

Q. Then, the only change there is the false addition of two figures for the month of November in your wages column of your purchase control, is that correct?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Is there any

(Testimony of L. Hicks Taylor.)

other entry of that $1200 of adjustment for wages other than the addition of the two figures for a total $1200 less than the correct total?

A. The $1200 is deducted at the end of the year, and it is added to the equipment account in the same expense control account.

Q. What is the month at which that $1200 adjustment is made there?

A. Apparently I reflected it at the end of November in working it out.

Q. That is not the end of the fiscal year, is it?

A. The end of the year, it brings the total into the end of the year.

Q. There was a December total added after that?

A. Yes, it is less $1200, or it should be.

Q. Did you make the addition at the end of November or go back and change the figures?

A. That I will not say. The work sheet reflects when the job was done.

Q. Does it look like the figure was changed there for your footing for November?

A. Yes, it does.

Q. Now, we will go to the November entry for equipment, under purchase control, and your footing at the beginning of November is what, please?

A. $7,984.36.

Q. And became? A. $6,460.01.

Q. That was the second series of figures you had, that you added there? A. Yes.

Q. And your next entry is what?

(Testimony of L. Hicks Taylor.)

A. $325.35.

Q. And what figure did you get?

A. $6,784.36.

Q. And what figure then shows for your footing at [3811] the end of November, 1948?

A. $7,984.36.

Q. And what is the difference between the first time you added it here in the court room and the figure that shows on your footing for November, 1948? A. It is $1200.

Q. What is that $1200?

A. That is the same $1200 we have been conversing about here for some time.

Q. Is there any other entry in your ledger that you maintained to reflect that $1200 wages?

A. It reflects right here. It shows a decrease in wages and an increase in equipment.

Q. Through what?

A. Through the general ledger. This is a part of the general ledger, this series of accounts.

Q. Then the only place that that wages is reduced $1200 and equipment added $1200 is by erroneous additions of those two sets of figures, is that not correct?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Mr. Griffin: May I inquire, when the witness answered: "This is part of the general ledger," what is [3112] he referring to, what document?

The Witness: Well, referring to the general

(Testimony of L. Hicks Taylor.)

ledger of the Puyallup Creamery, Exhibit 220, and we were reflecting its purpose from Exhibit 226.

Mr. Griffin: Work sheet?

The Witness: To show reflection of the entry.

Q. (By Mr. Obenour continuing): Now, how does the addition of the footing for the end of October, plus the entry for November showing a total $1200 less than the true figure, show an adjustment of the $1200 Mr. Forster received for the month—through the year of 1948?

Mr. LeSourd: Object to the form of the question, no showing as to what the true figure is.

Mr. Obenour: There was testimony all through the morning.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: You used the words "true figure," and it subjects the question to objection, probably. If you can eliminate that——

Mr. Obenour: (Interposing) Very well. [3813]

Q. (By Mr. Obenour): How does the manner in which you computed your footing for the month of November in wages reflect an item for the amount of money Mr. Forster received for the year 1948 from Simonson and Forster?

A. It shows that it was restored to profit through the wage account.

Q. Did you then consider that wages through the—until December?

A. The only way to explain that, Mr. Obenour,

(Testimony of L. Hicks Taylor.)

is that at the time it was set up, there was no decision as to what it was going to be, and I instructed Mr. Forster, or Mr. Simonson, to put it in an expense column as merely a descriptive column.

Q. Did you make out a W-2 for that $1200?

A. I did not prepare the W-2's but it was not considered wages the way it was finally settled.

Q. Are not W-2's computed as each monthly payment is made?

A. A wage record that is properly kept would show the withholding tax and the Social Security deductions made monthly.

Q. And does not a company show a recap that they submit to the Government at the end of the year, showing the totals of all W-2 forms that they are submitting to the Government for the total wages paid? [3814]

Mr. LeSourd: Objected to as irrelevant.

Mr. Obenour: On the contrary, if the Court please.

The Court: Objection overruled.

A. That is the practice of the office force in all these places.

Q. (By Mr. Obenour): And was that entry in —was that not the entry then, of reducing wages $1200 so that the recap, or W-2, of Simonson and Forster, that they would submit to the Government, would not show the receipt of $1200 from Simonson and Forster in that year?

A. It was determined that it was not the salary so it would not appear in the wage account.

(Testimony of L. Hicks Taylor.)

Q. Was a 1099 prepared on it?

A. It was not. He was an officer in the company and had authority to draw money from the company if he cared to.

Q. He received the money?

A. The checks here display he received the money.

Q. You knew he received it?

A. Certainly I did.

Q. You did not include it on the tax returns?

A. I did not. [3815]

Q. What was the adjustment you made for 1949?

A. There appears to be one entry of $1,553.69.

Q. Now, that, I believe, you testified included the $1200 Mr. Forster received in 1949?

A. To the best of my recollection, it does, without having the work sheet.

Q. And what is that figure again?

A. $1,553.69.

Q. I will ask you, what is the total of your footings for the equipment columns at the end of 1949?

A. $1,553.69.

Q. That is exactly the same figure, is it not?

A. Yes, sir.

Q. And is that not a computation of all of the entries you made in your ledger for the year 1949 for the equipment column?

A. No. There is an entry of $1,109.98 also.

Q. There is what?

A. One for $1,109.98.

(Testimony of L. Hicks Taylor.)

Q. But the $1,553. you stated, included the $1200 to Mr. Forster?

A. I didn't state that. I quoted the figure that I thought it might be in. I don't see it in this.

Q. Now—you say then this $1,553 figure does not include the adjustment for Mr. Forster?

A. It apparently does not.

Q. Then where is the figure in your ledger to show the $1200 Mr. Forster received in 1949?

A. Without the work sheet, I cannot give you that answer, because the ledger was not officially closed when I turned it over to them when I left the City.

Q. Was there any equipment involved in that transaction?

A. It was supposed to be the same situation in 1949 as existed in 1948 with Mr. Forster and Mr. Simonson.

Q. Do you know any more about the type of equipment, supposedly used in 1949, than you testified to in 1948?

A. I really don't know, Mr. Obenour.

Q. You have no knowledge about what the equipment is?

A. No, at this time, I don't have a recollection.

Q. Was there any entry then as to Mr. Simonson's participation in this equipment in 1949?

A. No.

Q. Was there any W-2 for the money Mr. Forster [3817] received?

(Testimony of L. Hicks Taylor.)

A. I would not be able to tell you. I didn't prepare those.

Q. What would be the reason that the money Mr. Forster received as one officer and owner of the company should be handled differently than the money Mr. Simonson received as an officer and owner of the company?

A. As I explained before, there was no determination what this drawing was for or about. This corporation was losing money, and it would be necessary to contribute to the capital at some time and this was not considered a wage withdrawal.

Q. Mr. Forster received the money?

A. Yes; I will say "yes."

Q. Not shown on the—on his tax returns that you prepared? A. Correct.

Q. And handled in the manner that you have described as to the ledger you maintained?

A. In other words, it was restored to profit.

Q. Now, are those among the books you include under the provision of the stamp that you use on the tax return of Mr. Forster and Simonson and Forster Corporation? [3818]

Mr. LeSourd: Objected to unless he specifies what he means by "those." I don't know what he is talking about.

The Court: Do you wish to clarify, Mr. Obenour?

Q. (By Mr. Obenour continuing): You qualified certain books that you kept as your responsi-

(Testimony of L. Hicks Taylor.)

bility in extending to the Government the corporation tax returns; do you recall? A. Yes.

Q. And you excluded other books that you had not kept?

A. I don't believe anything was excluded.

Q. What was the purpose of your stamp?

A. It is to display the work that was done in the preparation of the tax return.

Q. And to notify the Government you were not responsible for the truth of certain figures in the books?

Mr. LeSourd: Objected to, your Honor, as an improper form of question.

Mr. Obenour: I believe that was——

The Court: (Interposing) Objection sustained.

Q. (By Mr. Obenour continuing): Was there any way that anyone could determine Mr. Forster was receiving $100 a month from Simonson and Forster from your ledger?

Mr. LeSourd: If your Honor please, I will object to this question, and note an objection to the line of questions where they assume that details are supposed to go in a general ledger.

Details are in subsidiary books, and not a general ledger. It is an improper question.

Mr. Obenour: I see nothing improper. He says it is all in the system in the preparation of the returns for the Government.

The Court: And your question is that $100 must appear in the ledger?

Mr. Obenour: Could anyone determine from the

(Testimony of L. Hicks Taylor.)

books he maintained that Mr. Forster was receiving $100 a month from Simonson and Forster?

Mr. LeSourd: Your Honor, the journals would clearly show those payments, and the question is completely misleading and improper. It assumes that the general ledger should have every item listed in it, and that is not the purpose of it.

The Court: I think that may be correct, but the witness could answer, I assume, properly. The Court [3820] will overrule the objection.

A. The journals show checks issued to Mr. Forster; twelve of them, I believe, or eleven, in one year, and twelve in the next year.

Q. (By Mr. Obenour): And that is your answer? I refer to the books that you maintained.

A. The books that I maintained?

Q. Yes.

A. They do not show twelve checks in each year. The journals, at Puyallup, will show twelve checks in each year.

Q. Referring to Renton Ice and Ice Cream Company, they employed a bookkeeper there?

A. In the first part, Mr. Schneider was a bookkeeper, with a part-time girl.

Q. Later, they employed a full-time bookkeeper?

A. Well, partial bookkeeper under Mr. Schneider's direct supervision.

Q. She kept some of the books, and Mr. Schneider kept part; accounts payable and what else?

A. Mr. Schneider kept the check register.

(Testimony of L. Hicks Taylor.)

Q. Mr. Schneider kept the check register, and accounts payable?

A. There was no accounts payable register while I [3821] was there.

Q. There was an exhibit, I believe, that Mr. Schneider identified as an accounts payable book.

A. What he identified by that accounts payable was not used while I was there. It was never completed.

Q. But he did keep that?

A. He kept parts of it, yes.

Q. Did you discuss the bookkeeping system of Renton Ice Cream with the regular bookkeeper they employed?

A. No, not in its entirety, no. I discussed various little items, I presume, in conversation. I don't recollect any particular thing.

Q. Did you determine, or, rather, did anything occur during this period of 1945 to 1949 that caused you to believe that the bookkeeper was not competent? A. I don't believe so.

Q. And did anything occur in 1945 to 1949 to cause you to think that the bookkeeper was not honest? A. I don't believe so.

Q. Now, as I understand the testimony, you stated that in September of 1942 at the first stockholders' meeting of the Renton Ice and Ice Cream Company [3822] the salary plan was discussed?

A. That is correct.

Q. Now, was it before this or at this time that

(Testimony of L. Hicks Taylor.)

it was discussed that Mr. Forster should remain in the background because of Mr. Williams?

A. At that time, at the meeting of the organization, and then many times after that.

Q. What was the concern, that Mr. Williams would not sell to the combination of Schneider, Baskett and Forster?

A. That is partially the story, yes.

Q. What is the rest of it?

A. The rest was a competitive position that Mr. Forster was in.

Q. What was that competitive position?

A. As I recollect, Mr. Forster had an ice cream business east of Lake Washington and a gentleman's agreement was worked out with other ice cream companies that they would not go into that territory if Mr. Forster didn't move his ice cream business into Seattle.

Q. Well, then, what did that have to do with his being known out in Renton?

A. Am I to explain another part? The Arden Ice Cream Company, or Arden Farms, furnished the ice cream mix to the Renton Ice and Ice Cream Company, and [3823] Mr. Forster didn't particularly care about Arden knowing about it until he was able to take the business over.

Q. From the outset, when Mr. Forster first became interested in this company, it was determined that his presence should be concealed?

A. To some——

Mr. LeSourd: (Interposing) I object to the form

(Testimony of L. Hicks Taylor.)

of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour): What was the purpose then of Mr. Forster's not being identified with it?

A. For competitive reasons.

Q. And his identity was to be what would you say—concealed?

A. Well, you probably would call it that.

Q. And then in plan with this concealment, you became one of the original incorporators?

A. That is correct.

Q. And you took, nominally took, ten shares of the corporation stock?

A. In the organization, usually there are three subscribers and in order to complete the incorporation, I subscribed for ten shares for Mr. Forster.

Q. So Mr. Forster's name did not appear in the original articles of incorporation?

A. That is correct.

Q. And similarly, he did not appear as an officer of the corporation at that time?

A. I believe that is correct.

Q. And at the time that the company was founded you became the Secretary-Treasurer of the corporation? A. That is correct.

Q. Mr. Forster's name was not appearing on the signature card for the bank account at that time?

A. To the best of my recollection, Mr. Forster's name didn't appear until some time in 1945 or '46.

Q. And, however, Mr. Forster was actually participating in the operation of the Renton Ice and

(Testimony of L. Hicks Taylor.)

Ice Cream Company from the first time it was taken over by Baskett and Schneider?

A. He was functioning as a part owner.

Q. He attended the corporation meetings?

A. Yes.

Q. And his name appeared on the minute books?

A. To the best of my recollection, he didn't appear in the minute books until 1945 or 1946.

Q. His name appeared in the stock book though, didn't it, right from the first? [3825]

A. That is possible, yes.

Q. Now, in accordance with this plan of concealing Mr. Forster's identity with this company, this salary plan was formed in September, 1942, is that correct?

A. I would not say "concealing the payments to Mr. Forster," but the payment plan, or the agreement, was made in that time.

Q. Well, what was the plan?

A. The agreement was that Mr. Forster should receive one-third of the remaining portion of the salaries of Mr. Baskett and of Mr. Schneider.

Q. And this was made in September, 1942, at this meeting? Who was present at this meeting?

A. Mr. Baskett, Mr. Schneider, Mr. Forster, and myself.

Q. Why was this plan made?

A. As to carrying out the more or less concealing of his identity as being a party of the Renton Ice and Ice Cream Company.

Q. And this payment of money to Mr. Forster

(Testimony of L. Hicks Taylor.)

in this manner was to conceal his participation in it?

A. The thought was to—the name part—the checks were made so that there would not be any concealment. [3826]

Q. What was that, again?

A. The checks were made so that there would not be a concealment of it.

Q. The checks were made so that there would not be a concealment? A. That is right.

Q. How was that to be done?

A. Two-thirds of the amount to Schneider and Baskett, and one-third to Schneider and Baskett to be endorsed which Mr. Forster would receive and his endorsement would appear on the back.

Q. How would payment of money to Mr. Forster show then that he was receiving this?

A. That was Mr. Forster's type of bookkeeping to look after.

Q. How would this—you stated that this plan was to show that he did receive the money, if I understood you correctly. How does that show he received the money?

A. His endorsement on the back would be a definite proof of the receipt of the funds.

Q. So, if someone went through all the cancelled checks of the Renton Ice and Ice Cream and looked at all the endorsements they could readily see Mr. Forster was receiving this money? [3827]

A. That is true.

(Testimony of L. Hicks Taylor.)

Q. And that is your idea of identifying Mr. Forster as receiving the money?

Mr. LeSourd: Objected to, argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): How were these checks entered, Mr. Taylor?

A. They were entered on the Renton Ice and Ice Cream books as salary to those two gentlemen.

Q. What two gentlemen?

A. Mr. Schneider and Mr. Baskett.

Q. If all these checks in Exhibits 202, 203, 204, 205,—pardon me, not 205—206, 208, 207 and 209—not 209—210 and 211—those were all entered in this manner and charged to salary of Mr. Baskett and Mr. Schneider?

Mr. LeSourd: I will object unless he hands them to the witness. To assume that anyone can remember all these exhibits by number——

Mr. Obenour: (Interposing) Surely. Let's go one by one.

The Court: Do you have them all there?

Mr. Obenour: Yes, sir.

The Court: You might show them all. [3828]

Q. (By Mr. Obenour): 202, three checks, $125, two to Mr. Baskett and one to Mr. Schneider in 1943.

Were those charged to the salary of those gentlemen?

A. I cannot recollect what these three are. I am not clear in my mind.

Q. 203, can you recollect what those are?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. What are those?

A. These are the salary checks issued to R. J. Schneider, Maisie Baskett, and another to Maisie Baskett, completing their annual salary, presumably for the year 1944.

Q. And those were made then in the manner you described of two checks, one in the amount of two-thirds to Baskett and Schneider, and one-third to the same gentleman which would be endorsed to Mr. Forster?

A. Yes, and they show Mr. Forster's endorsement on them.

Q. Now, then, Exhibit 208, a group of four checks, is that a similar plan that you have described in the year 1948? A. Yes.

Q. Now, this was in accordance with the plan made [3829] on that date, is that right?

A. The plan made in 1942.

Q. The plan made in 1942? A. Yes.

Q. Whose plan was this, now?

A. The combined group.

Q. The combined group?

A. All four; all four people present.

Q. Did you participate in that? A. I did.

Q. And then it was through the combined thinking of four of you that this plan was formulated?

A. Yes.

Q. And who was responsible for the manner in which the bookkeeping was to be made?

(Testimony of L. Hicks Taylor.)

A. Well, I presume that I was the one that handled the books.

Q. Who instructed Mr. Schneider and the bookkeeper as to how the checks were to be charged?

A. Mr. Schneider knew how they were to be charged, and set them up that way.

Q. But you had instructed him in the first place?

A. It wasn't my instruction necessarily. It was all planned and worked out the day of the agreement. [3830]

Q. Who computed the amounts?

A. In many cases, it was necessary for me to pick up the withdrawals and figure the withholding tax for the year, and I would sometimes give them a final figure.

Q. Is that like the note on the exhibit you are holding in your hand; 208, is it?

A. I am looking at Exhibit 208. There are calculations here which is not in my handwriting, but it has a note—Mr. Schneider, Mr. Taylor says the total is.

Q. Did you so advise the bookkeeper there of those figures?

A. It is possible I did. While they are not in my handwriting——

Q. (Interposing) Then the plan was for the four check compensations and Mr. Forster would be known to receive his money through the endorsements?

A. It could be checked that way, yes.

(Testimony of L. Hicks Taylor.)

Q. Well, why did you use then counter checks on the Renton Bank for the payments in 1945, '46 and '47?

A. Mr. Obenour, do you have the other exhibits that go with these? [3831]

Q. Which exhibits are those?

A. There must be exhibits to go with these, because these are the entire amount of checks to the individuals.

Q. Handing you Exhibits 75, 76, and 77, cashier checks to Hans Forster in each instance for the years 1945, '6 and '7; is that to which you referred?

(Whereupon, there was a brief pause.)

Mr. Cox: Is there a question pending?

Mr. Obenour: Yes, I asked and he asked to see them.

A. I am reading from Exhibit 204. There are two checks on the Renton Ice and Ice Cream Company. One made to Maisie Baskett for $4,110, one to R. J. Schneider for $3,600 and they are dated August 27, 1945. At that date, Mr. Schneider changed the agreement to suit Mr. Schneider, and he took the checks and ordered cashier checks which changed the original agreement.

Q. (By Mr. Obenour): You knew nothing about this? A. I knew nothing about it.

Q. Did you not sign these checks to Mr. Schneider and Mrs. Baskett in the year 1947, Exhibit [3832] 207?

A. I might clarify my statement by this: that in the signing of these original checks from the Ren-

(Testimony of L. Hicks Taylor.)

ton Ice and Ice Cream Company, I wrote the checks.

Q. You wrote the checks?

A. I wrote the checks, but, so far as the cashier check situation, that was Mr. Schneider's definite idea, and he handled that himself, completely.

Q. Then after this plan was formulated, which you described, in the years 1945, '6 and '7, a single check was made to each of the two stockholders, Schneider and Baskett, is that correct?

A. It is my recollection until 1947 or '8 they wrote two checks.

Q. And you made out the checks, you directed the checks?

A. I don't know about in the later years.

Q. Well, did you say you drew these checks?

A. I wrote those checks.

Q. 204, —6 and—7?

A. Those were written by me and in my handwriting.

Q. So that you knew checks were being made in each of those years to Mr. Baskett and later Mrs. [3833] Baskett and to Mr. Schneider?

A. That is correct.

Q. You knew it was not in accordance with the plans as you understood them?

A. The original arrangement was changed.

Q. You knew that Mr. Schneider was then buying cashier's checks?

A. It never came to my attention that he was.

Q. It never came to your attention?

A. No.

(Testimony of L. Hicks Taylor.)

Q. Did you think that Mr. Schneider was not paying Mr. Forster his share for that one-third?

A. That I don't know.

Q. Did Mr. Forster ever say he was not receiving his one-third in those years?

A. I don't know that he ever mentioned it to me.

Q. For three years, a company in which you were secretary-treasurer and of which Mr. Forster was president, and in that time he did not bring up to you the fact that he was not receiving any money from this corporation?

A. He didn't mention it to me, particularly, to my knowledge, to my recollection.

Q. Did you ever have any doubt in your mind [3834] he was receiving this money when you made out equal checks to Mr. Schneider and Mrs. Baskett?

A. There would be no reason for me to surmise what was going on.

Q. Did you have any doubt in your mind that Mr. Forster was not receiving his share of those checks? A. Any doubt in my mind?

Q. That is right.

A. I never gave it a thought.

Q. Why, then, in 1948 did you go back to the other system?

A. That was done by Mr. Schneider, not by me.

Q. By Mr. Schneider?

A. He was President and Manager of that concern.

(Testimony of L. Hicks Taylor.)

Q. And you know nothing about those checks?

A. I never made them, I don't know; but, you might show me, if you have the exhibit.

Q. Do you have any computations of the splits?

A. I possibly——

Q. (Interposing) In 1945, '6 and '7?

A. The split they were to make?

Q. Yes, that they were. A. I did not

Q. You made no computation of the fact that Mr. Forster received $2,685 in 1947, and $2,685——

A. (Interposing) I did not.

Q. You knew nothing about it?

A. I did not.

Q. But you did, in 1948, recalculate the amount, according to the note in the exhibit 208?

Mr. LeSourd: Just a moment. Are you talking about the amount paid to Mr. Forster, or the amount of the withholding tax?

M. Obenour: The amount paid to Mr. Forster.

A. This is not in my handwriting, Mr. Obenour. Somebody said, "Mr. Taylor says this."

Q. (By Mr. Obenour continuing): You said it was true a moment ago, didn't you?

A. I said it was possible it was true. I didn't say absolutely it was.

Q. Do you recall computing the distribution of the proceeds at the end of the year at any time after 1944?

A. When you say "proceeds," you mean what each one, Mr. Schneider and Mrs. Baskett, had, yes.

Q. And Mr. Forster?

(Testimony of L. Hicks Taylor.)

A. I had nothing to do with what Mr. Forster [3836] was paid. That was figured by Mr. Schneider.

Mr. Obenour: We would recess now, if the Court please.

The Court: You wish a recess?

Mr. Obenour: Yes.

The Court: Ladies and Gentlemen of the Jury: At this time, we will recess for the afternoon recess. The Court calls your attention to the admonition given on similar occasions and asks that you heed that admonition on this occasion.

You may now be excused.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 2:46 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:00 o'clock p.m. April 14, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the jury.

(Whereupon, the jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the court room? [3837]

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Obenour.

Q. (By Mr. Obenour): Why wasn't the salary

(Testimony of L. Hicks Taylor.)

account set up for Mr. Forster as it was for Mr. Baskett and Mr. Schneider?

A. The original agreement was that the salary of Mr. Baskett and Mr. Schneider would be set at five thousand a year, and this distribution was to be not a salary for Mr. Forster, but a contribution to his earnings.

Q. A contribution to his earnings?

A. That is right.

Q. You say it was not a salary?

A. Not intended specifically, or technically, as a salary.

Q. What was it?

A. It was a contribution for his support of the two in their operation.

Q. And was it a dividend?

A. No, it wouldn't be called a dividend.

Q. What would it be called? A. Earnings.

Q. Earnings? A. To Mr. Forster, yes.

Q. Wouldn't that earning be taxable?

A. Yes.

Q. It would be taxable to Mr. Forster?

A. Yes.

Q. Why wasn't it then set up as some account to Mr. Forster, rather than concealed in the salary account of Mr. Baskett and Mr. Schneider?

A. That was the continuation of the agreement.

Q. And that was to conceal his participation from Mr. Williams and from his competition?

A. That was the general idea.

Q. After the sale was made from Mr. Williams,

(Testimony of L. Hicks Taylor.)

Mr. Williams could no longer affect the transaction, could he?

A. Well, they still owed Mr. Williams considerable money.

Q. But he couldn't go back on them, then, at that time, could he?

A. That I am not familiar with, all the details.

Q. So that after 1942, Mr. Williams would no longer be of concern to them?

Mr. LeSourd: Objection. Argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): I believe you stated it was [3839] Mr. Forster's participation that was concerned because of the sale of mix by Arden's to Renton, is that correct?

A. That is partially it, yes.

Q. And Mr. Forster, through Issaquah Creamery, took over this mix account in 1944 according to the testimony, is that correct?

A. I haven't any recollection of the time that products were taken over, because I didn't particularly deal with that.

Q. Wasn't that approximately it, to the best of your recollection?

A. I thought it was late 1945, but I may be wrong.

Q. But after this date, in any event, there was no reason to conceal Mr. Forster's participation until 1950 on that score, was there?

A. It just continued on, is all that happened.

(Testimony of L. Hicks Taylor.)

Q. So that there was no reason to conceal Mr. Forster's participation after that time?

A. No.

Q. And then why was not a salary account set up for Mr. Forster at that time?

A. That I cannot answer. They just continued on the same agreement until 1945 or '6 here when Mr. [3840] Schneider changed it.

Q. Were the W-2's made out for Mr. Forster at any time?

A. I had nothing to do with W-2's, so I don't know.

Q. You know you included one, though, in the preparation of his income tax. A. I did what?

Q. You know you included one W-2?

A. Yes, I know that, but I had no part in preparing it.

Q. And none of this money was included by you on his tax return? A. I don't know.

Q. You don't know?

A. No.

Q. Did you include any other income on the tax return you prepared, other than the salary of Mr. Forster?

A. This agreement was that Mr. Forster would deposit those funds in the Alpine Dairy bank account.

Q. When was that agreement made?

A. In 1942.

Q. To deposit in the Alpine Bank Account?

(Testimony of L. Hicks Taylor.)

A. Alpine Dairy bank account, so that it would [3841] be taken into income.

Q. How would that be taken into income?

A. On the Alpine books. It would be an income item.

Q. A deposit to the Alpine Bank Account would become an income item on the Alpine books?

A. Income on the Alpine books.

Q. How would that get on the Alpine books?

A. By depositing it in the Alpine bank account.

Q. Weren't the books kept by Mrs. Wilcox at Alpine Dairy for the money she received through payments from sales? A. That is right.

Q. This would be included in the sales of Alpine Dairy? A. To show it included.

Q. Then you intended the tax be paid twice, by Mr. Baskett and Mr. Schneider and secondly, by Mr. Forster?

A. Well, the salary had to be paid on.

Q. You intended this money received by Mr. Forster from Mr. Baskett and Mr. Schneider should be paid twice, the taxes thereon should be paid twice, is that right? [3842] A. Paid twice?

Q. Yes, by Mr. Baskett and Mr. Schneider in their personal tax return?

A. They paid for those.

Q. And then again on the income of the Alpine Dairy, the tax on the proceeds?

A. Would there be a double tax if Mr. Forster paid on his?

Q. Mr. Baskett and Mr. Schneider, according

(Testimony of L. Hicks Taylor.)

to the returns you prepared, paid tax on the entire amount set up? A. That is correct.

Q. The tax would be paid there, would it not?

A. Yes.

Q. And would be, if included on the income of Mr. Forster at Alpine Dairy, it would be paid again?

A. Mr. Forster would be paying on his——

Q. (Interposing) It would be paid twice, would it not?

A. You might work out a formula that would look that way.

Q. Wouldn't it be paid twice?

A. I don't see that it would.

Q. You consider that salary as sales of Alpine Dairy?

A. It would be a miscellaneous earning that would be accumulated into the records.

Q. It would be picked up as sales of Alpine?

A. Yes.

Q. Would they pay sales tax on that?

A. Not sales tax. It would be wholesale. They would pay a business tax on it.

Q. Then the earnings paid Mr. Forster from Renton Ice Cream would be a wholesale of Alpine Dairy, is that what you mean?

A. If you understood the set-up of Alpine Dairy, you would understand what I mean when I say it went through the wholesale sales of Alpine Dairy bookkeeping system.

Q. Did you so instruct Mrs. Wilcox?

(Testimony of L. Hicks Taylor.)

A. I didn't instruct anybody. That was not my business.

Q. Did you set up the plan?

A. It was not my plan. It was a plan of four people.

Q. You were in on it?

A. Certainly, I sat in on it.

Q. And you prepared Mr. Forster's return?

A. I did.

Q. And you prepared the returns of Alpine, including [3844] Mr. Forster's, and of Renton?

A. When you say "including Renton"— Alpine Dairy, we took care of, yes.

Q. It was included in Mr. Forster's return?

A. Yes.

Q. And you still did nothing further to determine whether or not that was included in the sales of Alpine Dairy?

A. It was not my place. I wasn't auditing the books.

Q. Now, you say this entire plan was to conceal Mr. Forster's participation?

A. Just his identity in the operation.

Q. From his competitors?

A. That is right.

Q. How would his competitors see the books of Renton Ice and Ice Cream Company?

A. They wouldn't see the books. They would see checks floating around.

Q. They would see checks floating around?

(Testimony of L. Hicks Taylor.)

A. Sure, if checks were written to him and he was signing checks.

Q. Mr. Forster received a list of two or three pages of checks that were included from all sorts of companies, as I recall, and you mean that ties him into [3845] those companies?

A. I am afraid I don't get what——

Q. (Interposing) You are saying now, then, that the fact that his name would be on the front of the check as a payee would show the competitor that he participated in Renton Ice and Ice Cream Company?

A. It is possible they could.

Q. And yet they wouldn't look over on the back and see the endorsement?

A. Because they went through one bank and were returned to the Renton Ice Cream Company.

Q. The competitors wouldn't see the corporate books, would they?

A. No, I don't think so.

Q. They wouldn't see the tax returns, would they? A. No.

Q. They wouldn't see any of the books of account where they would be carried as salary, would they? A. No.

Q. Then why was this money not included on the books and records of Renton Ice and Ice Cream Company?

A. Just according to what the agreement called for.

Q. Do you recall Revenue Agent Huff auditing

(Testimony of L. Hicks Taylor.)

the [3846] returns of Renton Ice and Ice Cream?

A. Yes.

Q. Did you disclose to Agent Huff this payment of money to Mr. Forster? A. No.

Q. Was there any way the Government could determine from any return or any books of the Renton, Alpine, or Mr. Forster, that he was receiving this money from Renton Ice Cream?

A. There was no intention of not paying the tax on it at all.

Q. The tax was not paid, though, was it?

A. I am not clear in my mind whether it was paid or not.

Q. Is it for this plan that you received $600 a year from Renton Ice and Ice Cream Company, Mr. Taylor?

A. I received $600 for services rendered, and nothing else.

Q. Either you or Mr. Schneider wrote all of these checks? A. Certainly.

Q. The bookkeeper had nothing to do with it?

A. Well, not that I know of.

Q. Mrs. Baskett had nothing to do with it except to turn over money to Mr. Forster? [3847]

A. That is right.

Q. Arctic Gardens, you have stated you kept the books and made out these checks. Do you recall one check Mrs. Wilcox testified she received from Arctic Gardens, payable to Alpine, and she entered it in miscellaneous receipts, Exhibit 240?

A. I have a recollection of it, yes.

(Testimony of L. Hicks Taylor.)

May I see it, please?

(Whereupon, document was handed to the witness by Mr. Obenour.)

The Court: Exhibit 240?

Mr. Obenour: Exhibit 240, yes, sir.

Q. (By Mr. Obenour): Do you recall that?

A. Yes.

Q. And you wrote that check.

A. I wrote that check.

Q. You mailed it to Alpine?

A. I may have mailed it to Alpine, yes.

Q. And it was properly handled, according to the testimony of Mrs. Wilcox and your knowledge of the affairs of Alpine Dairy in the miscellaneous receipts of the Alpine Dairy, is that correct?

Mr. LeSourd: Just a moment. I will object to that, combining two things: the knowledge and the [3848] testimony in this case.

Mr. Obenour: Very well.

Q. (By Mr. Obenour continuing): Do you recall the testimony of Mrs. Wilcox to the manner in which it was handled?

A. Yes, I remember the testimony.

Q. And do you agree, from your knowledge of the affairs of Alpine Dairy, that that was properly handled by Mrs. Wilcox in the receipts of that company?

Mr. LeSourd: Objected to as irrelevant and immaterial.

Mr. Obenour: I am asking for his knowledge, if that was properly handled by Mrs. Wilcox in the normal course of the books.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Ask him whether he knows. I have no objection to that.

Mr. Obenour: He knows the testimony of Mrs. Wilcox.

Mr. LeSourd: That is irrelevant.

The Court: The question is, whether he believes it was properly handled?

Mr. Obenour: Yes.

A. It has every evidence of having been properly handled. [3849]

Q. (By Mr. Obenour): Now, Exhibit 239 includes a group of other checks of Arctic Gardens, all signed by you, is that correct?

A. They are all written by me.

Q. And also 253 and 254.

A. 253 and 254 also were written by me.

Q. Were those checks mailed?

The Court: Just so that we may follow, and the jury, what are those?

Mr. Obenour: Checks of Alpine Dairy.

Mr. Cox: Arctic Gardens.

Mr. Obenour: Arctic Gardens, I am sorry, written by Mr. Taylor.

The Court: Written to Alpine?

Mr. Obenour: Among others, Alpine and Issaquah and Hans Forster.

I asked generally, where were those checks mailed, all of them.

Mr. LeSourd: It seems to me that the question goes to such breadth of scope, if Counsel wants to inquire about individual checks, here are some, pre-

(Testimony of L. Hicks Taylor.)

sumably, to repay loans and some Issaquah Creamery and some Alpine Dairy.

Mr. Obenour: He wrote all the checks. We will take them one at a time, if counsel desires. [3850]

Q. (By Mr. Obenour continuing): How many checks there are made to Alpine Dairy?

A. I find one dated February 28, 1948, for $641.16, on Exhibit 239.

Q. Where was that mailed, if you know?

A. It would be difficult for me to state exactly, but I believe I would have mailed it to the Alpine Dairy.

Q. You heard Mrs. Wilcox's testimony that the final check was the only Arctic Gardens check she received?

A. I heard her testimony to that effect.

Mr. LeSourd: Just a moment. I will move to strike the question and answer, because, as I recall her testimony, all she said was that was the only one she remembered, or had her endorsement. She didn't remember as to the others.

The Court: Well, the witness answered the question here. I believe you stated you recalled the matter.

I think, to straighten the record out, probably the witness stated what he recalled when he answered. Do you have a recollection?

The Witness: My recollection would be that [3851] I mailed this check to the Alpine——

The Court: (Interposing) No, the question is about when Mrs. Wilcox——

(Testimony of L. Hicks Taylor.)

Mr. Obenour: (Interposing) Yes, sir.

The Court: (Continuing) ——testified. I don't think it is properly in the record, because that isn't the issue. I think we might straighten the record out by striking that portion, and you may re-establish it, Mr. Obenour. The Court will strike that portion of the witness's testimony just given wherein it was asked if he recalled what the testimony was of Mrs. Wilcox and any answers in that respect may be stricken and disregarded, and I think you can start over, Mr. Obenour, if you wish to establish that point.

Q. (By Mr. Obenour): Do you recall Mrs. Wilcox's testimony concerning receipt of Arctic Gardens checks?

A. Yes, I have a recollection of it.

Q. What is that recollection?

A. That she deposited the checks she received from Arctic Gardens.

Q. Do you recall anything further as to any other Arctic Gardens checks she received?

A. If I recollect correctly, she said she had not received any more. [3852]

Q. To the best of your recollection, would her testimony be correct? A. I don't know.

Q. You don't remember specifically where you mailed that check?

A. No, I haven't—my natural routine would be, having made it out to Alpine Dairy, that that is where I would mail it.

(Testimony of L. Hicks Taylor.)

Q. How about the checks to Issaquah Creamery, what did you do with them?

A. Likewise, the same thing, mailed them to Issaquah Creamery Company.

Q. And Hans Forster, where?

A. To the Issaquah Creamery Company, or to Issaquah.

Q. Did you give any of those checks to Mr. Forster personally? A. It is possible.

Q. Could you have given the Alpine check to Mr. Forster personally?

A. That is possible, too.

Q. One of these—these were all just normal transactions so far as you were concerned?

A. They were written from bills forwarded to me to pay. [3853]

Q. One of them was for interest payments, was it not, in Exhibit 239, dated 12-31-45 in the amount of $773.21?

A. That is, as I remember it, yes.

Q. Do you find that check? A. Yes.

Q. And to whom is that written?

A. That is written to Mr. Hans Forster.

Q. And the amount is $773.21?

A. Correct.

Q. And was that for interest?

A. That was my understanding.

Q. On the last day of the year of 1945?

A. Yes, that is right.

Q. Did you make out a 1099 for that interest payment? A. I did not.

(Testimony of L. Hicks Taylor.)

Q. Why did you not make out a 1099 for the payment of that interest to Mr. Forster?

A. I presume that I didn't carry through, is all.

Q. You were required, according to your knowledge of the situations, to prepare such a form to send to the Government, were you not?

A. I expect I have to admit it. [3854]

Q. But you did not?

A. I did not, because it was a corporation and I didn't feel it was essential.

Q. Did you include that interest on the tax return of Mr. Forster for 1945?

A. I did not,——

Q. (Interposing) Wasn't that——

A. (Continuing) ——that I know of. Not as an individual item, I mean to say.

Q. You prepared the personal tax return of Mr. Forster at that same time and you did not include that as an interest item, either?

A. Unless he gave it to me in his total figures, I wouldn't know.

Q. Mr. Erickson was responsible for the books of Issaquah Creamery?

A. He was the office manager, yes.

Q. Mr. Forster testified, as I understood it, do you recall that Mr. Erickson was working for Issaquah Creamery and not for him; do you recall that testimony?

A. I have a recollection of it, yes.

Q. Who would you say Mr. Erickson was working for?

(Testimony of L. Hicks Taylor.)

Mr. Keesling: I object, your Honor. This wasn't gone into on direct. [3855]

The Court: I don't know the purpose of it, Mr. Obenour. It appears to be beyond the proper scope, unless it has some particular purpose.

Mr. Obenour: If the Court please, we are dealing with three defendants in the operation of a combined effort.

Necessarily, the knowledge of this witness as to the operation and conduct of the other defendants would be relevant, and certainly would be open to this witness's knowledge, or statement, rather, that he had no knowledge that anything was wrong in either the taxes of Mr. Forster or Issaquah Creamery Company, and this is Issaquah Creamery Company.

The Court: What is the purpose of asking this witness whether Mr. Erickson worked for Mr. Forster or Issaquah Creamery Company?

What does that have to do with the cross-examination of this witness? I will ask you the purpose which I wouldn't ordinarily.

Mr. Obenour: The purpose would be to show what this witness's knowledge is of the organization under the subject of the last four counts of the Indictment, Issaquah Creamery Company and each one of the three defendants.

The Court: The Court will sustain the objection. [3856]

Q. (By Mr. Obenour continuing): Did you go

(Testimony of L. Hicks Taylor.)

over the books of the Issaquah Creamery with Mr. Erickson?

A. I did not audit the books of the Issaquah Creamery Company.

Q. Did you discuss the bookkeeping system of Issaquah Creamery Company with Mr. Erickson?

A. Mr. Erickson had been thoroughly schooled in the bookkeeping system by the former bookkeeper, and my comments were only just occasional.

Q. Do you recall your statement made to Mr. Eppler on May 16th in this building?

A. I do not, offhand.

The Court: May 16th, what year?

Mr. Obenour: May 16th, 1951. Do you recall making a statement in this building, May 16th, 1951, in the presence of Mr. Eppler?

The Witness: Yes.

Q. (By Mr. Obenour continuing): Mr. LeSourd, Mr. O'Leary and Mrs. Stokie?

A. Yes, I remember the statements. That is the meeting.

Q. I will ask you if you were asked this [3857] question, and if you made this answer:

"Did Harold Erickson——"

"Question: Did Harold Erickson, the office manager at Issaquah Creamery Company, ever ask you for accounting advice or instructions as to how to carry out his duties as a bookkeeper for the corporation?"

"Answer: In 1937, I spent quite a little time with Harold Erickson, going over the various phases

(Testimony of L. Hicks Taylor.)

of the journals and various records then in existence, and I found that Mr. Erickson was a very excellent accountant and did not need too much coaching, and did a very fine job on the journals when presented."

A. That is a correct statement. Mrs. Eck, Miss Neukirchen, had thoroughly schooled him in the books and I was there and we went through them in a general way, not in detail.

Q. Was the bookkeeping system adequate?

A. I have always felt so.

Q. Did you set it up?

A. Not in its entirety. Some of it was in [3858] existence when I first went with the company, and was continued.

Q. Then would you explain Exhibit 258? That is the chart of accounts that was to be used?

A. That chart of accounts was made up, I believe, if I recollect correctly, in 1940 when we had the break over, but I am not going to make a positive statement as to that, but I think that is when I made that chart of accounts.

Q. That was your chart of accounts?

A. Yes. You will find from—through these books, it is the same chart.

Q. And all of the books of Issaquah, with the exception of the ledger, were kept under Mr. Erickson's supervision at Issaquah Creamery?

A. That is correct.

Q. And here, again, you kept the ledger and you

(Testimony of L. Hicks Taylor.)

would go there once a month to get the figures that would be totalled by Mr. Erickson?

A. That is correct.

Q. Did you ever look into the books at all?

A. I never audited the books.

Q. Did you ever look into the books?

A. When you say "look into them," I had to look into them to make my postings. [3859]

Q. Did you examine the entries?

A. Not any special entries, no.

Q. Mr. Erickson never asked you any questions how any expense should be posted, or charged, rather?

A. Well, I wouldn't want to say that he didn't ever ask me, because I think he did.

Q. Did he ever ask you how to enter any money received?

A. Oh, he probably did. I don't just recollect.

Q. Did you ever ask Mr. Erickson how he showed receipts of Apex checks?

A. I didn't know anything about the Apex checks.

Q. How about Finstad and Utgard checks?

A. I have no knowledge of them.

Q. Arctic Garden checks?

A. I wrote them. I knew they were written, but I had no knowledge as to how he was handling them.

Q. Did you ever ask him? A. No.

Mr. Obenour: May I have Exhibit 238?

(Testimony of L. Hicks Taylor.)

(Whereupon, Exhibit was handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Do you recall Mr. Eppler's testimony as to [3860] the amount of personal expenses that were charged to business expenses of Issaquah and Alpine?

A. Yes, I have a recollection of it.

Q. Do you recall the amount as being twenty-five thousand three hundred two dollars to Alpine, and twenty-five thousand two hundred seven to Issaquah?

A. The amounts I can't just remember, but I remember the testimony.

Q. Would it be approximately those amounts?

Mr. LeSourd: Objected to, your Honor. He says he can't remember.

The Court: Well, he asked him if he knows, approximately. If he doesn't, he may say so.

A. I don't remember approximately, even, without seeing the schedule.

Mr. Obenour: Would you stipulate as to the totals of Exhibit 238?

Mr. Cox: We already have.

Mr. LeSourd: I think this is——

Mr. Obeonur: (Interposing) There is no total on it.

Mr. LeSourd: I don't know what the total is. Have you personally totalled it?

Mr. Obenour: I haven't but Mr. Simonson [3861] has.

Mr. LeSourd: Well, if Mr. Simonson says the

(Testimony of L. Hicks Taylor.)

total is so much, I will go on Mr. Simonson's statement.

Mr. Griffin: Is that Simonson and Forster?

Mr. Obenour: $107,780.86.

Mr. LeSourd: Is that right, Mr. Obenour?

The Court: I am afraid we haven't in the record what the stipulation is.

Mr. Obenour: The totals of the entries on Exhibit 238, which was the stipulation as to checks made payable to Issaquah Creamery Company not recorded on the corporation's books and deposited to Hans Forster's personal savings account.

The Court: And what is the total?

Mr. Obenour: $107,780.86.

The Court: And it is stipulated has having been computed by one of the agents of the Internal Revenue?

Mr. Obenour: Yes, sir.

The Court: Anyone else want to join in that stipulation? I guess it is only material as between the Government and Mr. Taylor's counsel, is that correct?

Mr. Obenour: You are not joining? [3862]

Q. (By Mr. Obenour) Now, this——

Mr. LeSourd: (Interposing) Let's clarify this. This is a total, as I understand it, of the figures on the stipulated exhibit, 238, for all the years, 1943 through 1949, is that correct?

Mr. Obenour: That is correct.

Mr. LeSourd: I am willing to stipulate that as

(Testimony of L. Hicks Taylor.)

simply a total of the figures appearing on the exhibit.

The Court: The record may so show.

Q. (By Mr. Obenour continuing): Of all these checks totalling this amount of $107,000 is it your testimony you have knowledge of none of them? Do you care to examine them?

Mr. LeSourd: Now, if your Honor please, I will object to that question, unless it is stated, knowledge of what?

He has testified that he knew various checks were written in the ordinary course of business, and sent to Issaquah. I assume Counsel is talking about knowledge of the fact when they reached Issaquah they were not entered on the books.

The Court: If you request that counsel should state what he means when he refers to "Do you [3863] have knowledge?", the Court will ask that.

Q. (By Mr. Obenour continuing): Do you have knowledge, or did you have, that any of those checks deposited to 198 were not recorded on the books of Issaquah Creamery Company in the years 1945 to 1949?

A. May I still examine this? I am halfway through.

(Whereupon, there was a brief pause.)

Mr. LeSourd: Can we have the question repeated?

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:)

(Testimony of L. Hicks Taylor.)

"Do you have knowledge, or did you have, that any of those checks deposited to 198 and not recorded on the books of Issaquah Creamery Company in the years 1945 to 1949?")

Mr. LeSourd: I object to the form of that question.

The Court: Are you talking about the first portion of it—"Do you" or "did you," or the whole thing?

Mr. LeSourd: There is something grammatically [3864] incorrect.

Q. (By Mr. Obenour continuing): Did you have knowledge during the years 1945 to 1949 that any of the checks shown on that exhibit were not being recorded by Issaquah Creamery Company but were being deposited into Account 198?

The Court: Let me interrupt here. Are you inquiring as to whether he knew as to the manner in which the checks were issued during the current year?

Mr. Obenour: No, sir. I am inquiring, in accordance with that stipulation, that he had knowledge of any of those entries were being handled—not recorded and deposited directly to 198.

The Court: It isn't clear to me. I don't know whether it is clear to anyone else.

Mr. LeSourd: I didn't object to it, because as I understand the question, it is the same question I asked Mr. Taylor on direct: whether he knew during this period of time whether these checks were not being put on the books, and deposited in 198.

(Testimony of L. Hicks Taylor.)

If that is a correct interpretation of the question, I have no objection to it.

Mr. Griffin: I am not objecting, because, [3865] whatever he knew, the stipulation is there by his Counsel that they were not being recorded. It has all been stipulated months ago.

The Court: Well, they were not being recorded. The question now is, whether he knew.

Mr. *Obenour:* I took it that is what Mr. Obenour was asking.

The Court: If there is no objection to it, and the witness understands the question, he may answer.

A. I had no knowledge of the entries of any of the checks shown on Exhibit 238.

Q. (By Mr. Obenour): Do you recall——

The Court: (Interposing): You have no knowledge of the entries?

The Witness: Maybe I am ambiguous, too. No knowledge of the lack of entry in the Issaquah Creamery books of these items.

Q. (By Mr. Obenour continuing): And you are unable, from your bookkeeping, or accounting, for Issaquah Creamery to determine that $107,000 of Issaquah Creamery income was not being reported to you?

Mr. LeSourd: I will object to that, your Honor, whether he was able. He might have been able to [3866] if hired to make an audit. The form of the question, I think, is improper, and irrelevant and immaterial, whether he would be able to.

(Testimony of L. Hicks Taylor.)

The Court: Is your question whether he knew, or whether he might be able to know?

Mr. Obenour: Whether he knew that he did not know.

Mr. LeSourd: If he is asking what he knew, I have no objection.

Mr. Griffin: The question was, whether he was able.

The Court: That is the question. I think we will strike the question, and you better restate it.

Mr. Obenour: Very well.

Q. (By Mr. Obenour continuing): Then this information concerning this $107,000 was not given to you? A. That is correct.

Q. Then you did not determine that $107,000 of Issaquah income was not being entered as their taxable income?

Mr. LeSourd: Object to that. I don't understand that question, myself.

Mr. Obenour: I will rephrase it.

The Court: Do you strike the question, and [3867] you want to rephrase it?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour continuing): From your work with the Issaquah books, you did not determine that $101,000 was not reported in the tax returns of Issaquah Creamery?

Mr. LeSourd: I have the same objection.

The Court: The question is: from his work on the books, did he determine that?

Mr. LeSourd: Did he find that?

(Testimony of L. Hicks Taylor.)

The Court: Do you understand the question?

A. The records did not display any of these items to draw them to my attention.

Q. (By Mr. Obenour): Would you have known if this amount of money had been going to someone other than Mr. Forster? A. I would not.

Q. Do you recall Miss Neukirchen's testimony as to the unreported sales of Issaquah Creamery Ice Cream?

A. Yes, I have a recollection of it.

Q. Do you recall that she testified that she told you and complained to you because she had to withhold sales of ice cream? [3868]

Mr. LeSourd: Object to that. That is not a correct statement of the testimony.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): What is your recollection of her testimony concerning her report to you on the sales of ice cream that were not being reported?

A. I am not sure that I remember her testimony about me being in the picture.

Q. Do you recollect she reported to you?

A. I have no remembrance of her ever reporting to me.

A. Could she have? A. It is possible.

Q. But you did nothing further to determine whether or not these sales were being reported?

Mr. LeSourd: Objected to, your Honor. If the testimony indicates he never knew they were being reported, the form of the question is faulty.

(Testimony of L. Hicks Taylor.)

The Court: What sales are you referring to now?

Mr. Obenour: He stated that this unreported sales of ice cream, testified to by Miss Neukirchen——

The Court: (Interposing) And then he states he has no recollection of talking to them, and it isn't [3869] clear in my mind, at least, what sales they are referring to.

Mr. Obenour: I will rephrase it.

Q. (By Mr. Obenour continuing): You have no knowledge at all that ice cream sales were not being reported by Issaquah Creamery at any time?

A. That is correct.

Q. Did you advise Mr. Forster concerning the Daisy Ice Cream Company?

Mr. LeSourd: I will object——

A. (Interposing) I am not sure I understand.

Mr. LeSourd: (Continuing) That is ambiguous, if the Court please.

Mr. Obenour: Give me Number——

The Court: (Interposing) Pardon?

Mr. LeSourd: It is ambiguous. In connection with what?

Q. (By Mr. Obenour): Did you participate in the purchase of Daisy Ice Cream Company by Mr. Forster? A. Yes.

Q. Did you tell Mr. Forster when it was for sale?

A. To the best of my recollection, I did. [3870]

(Testimony of L. Hicks Taylor.)

Q. You helped Mr. Riig prepare deposit slips?

A. Yes.

Q. And you had nothing further to do with it?

A. That is correct.

Q. Did you have knowldege that Mr.—of that matter, to which Mr. Eppler testified as to the transfer of some $17,000 from the Daisy account to account 198?

A. The amount, I don't know. I remember him testifying, but I don't have the amount in my mind.

Q. Do you recall that money was transferred,—according to Mr. Eppler's testimony,—was transferred from the Daisy account to 198?

A. Yes, I remember testimony of that type.

Q. Do you have any recollection of—what is your recollection now, rather, of how this Daisy income was being reported?

A. I have no recollection of it at all.

Q. Did you think it was being reported?

A. Yes.

Q. How did you think it was being reported?

A. I don't know.

Q. Do you recall Miss Neukirchen's testimony that she entered the Daisy charges on the Issaquah sales analysis sheets, Exhibit 244?

A. I remember her testimony to that effect.

Q. Did you ever see those entries upon the sales analysis sheets?

A. I never examined sales records.

Q. Do you recall her testimony as to withholding

(Testimony of L. Hicks Taylor.)

some slips of Daisy, and then making out these sales recaps?

A. I remember the testimony, yes.

Q. Were you aware this was being done?

A. I was not.

Q. Do you recall your statement made to Mr. Eppler previously referred to in this building?

A. I recollect that I made a statement.

Q. I will ask you if you were asked this question, and made this answer:

Mr. LeSourd: What number, Mr. Obenour?

Mr. Obenour: Question seventy, page twelve.

Q. (By Mr. Obenour continuing): "Question: Did you inquire as to where the receipts from Daisy Ice Cream were taken into account for income tax purposes?

"Answer: In my work, it was my general opinion that they were being entered into the Alpine books. I never made any specific inquiry about them."

Were you asked that question and did you [3872] make that answer?

A. That is the answer I gave at that particular time, yes.

Q. Is that—was that a true statement?

A. It was true. My opinion was the income of the Daisy Ice Cream went into the Alpine.

Q. And this question, seventy-five:

"What was your understanding of the function of this bank account, and what efforts did you make to include it in the Alpine Dairy balance sheets?

"Answer: After the one time that I assisted Mr.

(Testimony of L. Hicks Taylor.)

Riig in making a deposit, that account, at no future time, ever came to my attention——"

Mr. Obenour: Pardon me.

Mr. LeSourd: You started reading there, Mr. Obenour. Will you finish reading?

Q. (Continuing) "It was handled by Mr. Erickson at Issaquah."

Mr. LeSourd: And "ever came to my attention in any way."

Q. (By Mr. Obenour continuing): "——ever came to my attention in any way, and was handled by Mr. Erickson [3873] at Issaquah.

"Mr. Eppler to Mr. LeSourd: 'Any point that you want to make, Mr. LeSourd, before we leave Daisy Ice Cream'?

"By Mr. LeSourd: I do not think his answer covers the whole of that question. You asked him what his understanding was as to the nature of the account, or something like that. I do not think he answered that."

And then your answer continued:

"It was for convenience the money was deposited in Peoples Bank to be immediately drawn on from Issaquah by Mr. Erickson, and it would not have anything to do as far as with the operation of Alpine books a separate bank account."

Was it your understanding then that it was being entered through the Alpine books as you answered in question seventy, or was it your understanding it was being handled through Issaquah as in seventy-five?

(Testimony of L. Hicks Taylor.)

A. I did not have a definite understanding at all of any of it.

Q. And you have no understanding of it now?

A. I have not.

The Court: When you read these answers, you [3874] were referring to the Daisy Ice Cream Company, is that correct?

Mr. Obenour: Yes, sir.

Mr. Keesling: May I inquire: Does counsel refer to Alpine Dairy or Alpine Ice Cream?

Mr. Obenour: I was reading a question put.

The Court: He was reading a question in a former interview.

Q. (By Mr. Obenour): This Daisy Ice Cream was purchased from Mr. Morris, as I understand it? A. F. M. Morris, yes.

Q. And were you in on that transaction at the time of the purchase?

A. I was doing some bookkeeping work for Mr. Morris at the time of the purchase.

Q. Do you recall the manner in which the sale was made?

A. My recollection is that there was some cash and a note, but I don't remember—haven't any remembrance of the amount, the total.

Q. Did you prepare the note?

A. It is possible.

Q. Did you keep track of the payments?

A. No. [3875]

Mr. Obenour: Excuse me a moment.

(Whereupon, there was a brief pause.)

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Then, at this same time, approximately that Mr. Forster testified, he became interested in a piece of land in the Denny Regrade area?

Mr. LeSourd: Objected to as not proper cross-examination, not a subject that forms any of the Government's case here, and we didn't go into this matter in chief.

Mr. Obenour: I believe it is relevant, if the Court please.

The Court: It is a preliminary question?

Mr. Obenour: Yes, sir.

Mr. LeSourd: This is an entirely separate transaction, as I understand it. The purchase of the real estate there has nothing to do with any part of the income which is alleged to have been evaded here, and which we covered in our direct examination.

The Court: Well, it is represented as being preliminary and the Court would overrule objection as to materiality at this time.

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour continuing): Do you recall that transaction, [3876] Mr. Taylor?

A. Very well.

Q. And were you—did you participate in the sale of this property to Mr. Morris?

A. Objected to, your Honor, improper cross-examination.

The Court: Objection overruled. It is still preliminary?

Mr. Obenour: Yes, sir.

(Testimony of L. Hicks Taylor.)

A. Yes, I participated in it.

Q. (By Mr. Obenour): And do you recall Mr. Forster's testimony as to the price that was paid for that property? That—if I recall, would you state whether or not this is your recollection: that he thought Mr. Morris wanted it badly, and they could get another one thousand dollars for it?

Mr. LeSourd: Objected to as improper cross-examination.

Q. (By Mr. Obenour continuing) Do you recall that testimony?

The Court: Objection overruled.

A. I don't have a recollection of the one thousand dollars. I believe it was five hundred more.

Q. (By Mr. Obenour): Five hundred more? What was the sale price of that property to Mr. Morris?

Mr. LeSourd: Same objection.

The Court: Objection overruled.

A. To the best of my recollection, it was $14,500.

Q. (By Mr. Obenour): And did you carry that on the tax return for Mr. Forster, that sale, that transaction, in the year 1946?

A. To the best of my recollection.

Mr. LeSourd: Just a moment. Same objection.

The Court: Objection overruled.

Q. (By Mr. Obenour): Handing you Exhibit 2, and referring to the schedule attached there, what would be page 3, and a notation "Real Estate," is that the item there, is that——

A. (Interposing) That would be——

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: (Interposing) Just a moment, if the Court please. May we, to avoid continual repetition, have a continuing objection to questions on this line of examination? It is improper cross-examination. This is a matter that we didn't go into in our direct examination. It isn't even involved in the case directly, and to permit counsel to go beyond [3878] the scope of proper cross——

The Court: (Interposing) I take it this goes to credibility?

Mr. Obenour: This goes to that matter.

The Court: On that basis, the Court is overruling the objection. It isn't that it is a material matter, apart from that.

Mr. LeSourd: Well, we may be faced with this many times in the course of this examination and if the Court is going to permit cross-examination into matters of this kind that are not a part of the direct examination, we want to be heard at some length on the matter.

The Court: I presume there is a limit. The Court will advise you now it will not permit unlimited cross-examination of this type.

Mr. Obenour: It is not our intention, if the Court please.

Mr. LeSourd: We ask for a continuing objection, then, to this line of questioning.

The Court: Yes, it may show.

Now, I don't want that to be to all questions, but when you think, as we are getting off of that, if

(Testimony of L. Hicks Taylor.)

you will make one objection and that will cover subsequent objections. [3879]

Mr. Obenour: Yes, I am speaking now of the items of the sale.

The Court: Yes.

Q. (By Mr. Obenour): Is that the——

The Court: (Interposing) Is there a question pending?

Mr. Obenour: I don't recall.

The Court: Do you wish to restate a question now?

Mr. Obenour: Yes.

Q. (By Mr. Obenour): You already referred to the schedule, page three of exhibit two, the tax return of Mr. Forster, 1946. Calling your attention to the item of real estate, is that correct, showing an acquisition in 1940? A. Yes.

Q. And a sale, is that correct, in——

A. (Interposing) 1946.

Q. And the amount of the sale is $14,500?

A. That is what appears here.

Q. And did you prepare that figure?

A. I did.

Q. And that was the selling price of that real estate? [3880] A. That is correct.

Q. And your computation, then, of the tax return includes the profit made on the sale of that real estate by Mr. Forster?

A. The profit shows $4500 on the sale.

Q. If the property was purchased for ten thousand, and sold for $14,500?

(Testimony of L. Hicks Taylor.)

A. That is correct.

Mr. Obenour: I ask that these be marked, please, as the exhibits next in order.

The Clerk: Plaintiff's Exhibits 286 and 287 marked for identification.

Strike 287. Plaintiff's Exhibit 286 marked for identification.

(Plaintiff's Exhibit No. 286 marked for identification.)

Q. (By Mr. Obenour): Handing you what has been marked for identification as Plaintiff's Exhibit 286, can you identify that, please?

A. Yes. This is an installment note from Mr. Frank L. Morris to the Issaquah Creamery Company, Incorporated, signed by Hans Forster, President.

Q. Is that from or to?

A. To Mr. Frank L. Morris from the Issaquah Creamery Company. [3881]

Q. And is that the note that you have been referring to, previously referred to, that was involved in the sale of Daisy Ice Cream from Mr. Morris to Mr. Forster?

A. From the appearance of the note, there is nothing to indicate that the real estate had any connection with this particular note.

Q. Is that the note to which you referred as being involved in the sale of the real estate, Daisy Ice Cream to Mr. Forster from Mr. Morris?

Mr. LeSourd: If your Honor please, I am com-

(Testimony of L. Hicks Taylor.)

pletely confused here, as to just what his question is.

The Court: I take it he'd better offer this.

Mr. Obenour: I was attempting identification as to whether this was the matter to which he referred.

The Court: Does he recognize the note? Do you identify it?

Mr. LeSourd: If the witness has seen the note before, and recognizes it.

A. I have seen the note. It is my belief that I typed it, but I am puzzled as to the application. The note itself——

Mr. LeSourd: (Interposing) Just a moment. We are [3882] just on identity now.

The Court: That is right.

The Witness: I can identify this page of it. The other page——

The Court: (Interposing) When you say "this page," what are you referring to?

The Witness: Well, the note itself. This note I recognize.

The Court: You recognize the top?

The Witness: The top, and I recognize this writing here as my penmanship, but this is what I am very puzzled about.

The Court: There are some entries above the writing that is yours?

The Witness: Yes. This writing is mine, but this is—while I have used that in working this calculation, I still—it doesn't bring back any recollection of what this note actually was for definitely.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Well, if the Court please, on the matter of identification, now, I submit he has identified the document. I suspect the reason they are being used is because he will be puzzled.

Mr. LeSourd: Well, the comment of Mr. Griffin——

The Court: (Interposing) Comment of counsel is [3883] not evidence, and the Jury will disregard it.

Mr. Griffin: I take it it is identified.

The Court: Are you offering it?

Mr. Obenour: Yes, sir; we will offer it.

Mr. Griffin: No objection.

Mr. Keesling: May I inquire the date?

Mr. Cox: May 1, 1944.

The Court: I understood, Mr. Griffin, you had no objection?

Mr. Griffin: No objection.

(Whereupon, there was a brief pause.)

* * * * * [3884]

L. HICKS TAYLOR

a defendant, upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination—(Continued)

Q. (By Mr. Obenour): Mr. Taylor, I believe you stated that when Mr. Forster purchased Daisy Ice Cream from Mr. Morris, that the payments for this transaction was by a portion being paid in

(Testimony of L. Hicks Taylor.)

cash, and the balance being paid by a note given by Mr. Forster to Mr. Morris, is that correct?

A. That is correct.

Q. And that was in 1944?

A. To the best of my recollection yes.

Q. And then this note was paid on, then, for a period of time, and did you keep track of those payments?

A. No, I had no connection with that.

Q. Did you prepare the note that showed this balance of the payment owed by Mr. Forster to Mr. Morris?

A. It is my recollection that I did, yes.

Q. And is that the balance, the face of Exhibit 286, that you so identified yesterday?

A. Yes, I prepared this note.

Q. That is Exhibit 286?

A. Exhibit 286, yes. [3912]

Q. May I see it, please?

Now, this is the note, then, that was given by Mr. Forster for the balance of the Daisy Ice Cream purchase price?

A. That would be my recollection of it, yes.

Q. Mr. Forster had acquired a piece of property in what is known as the Denny Regrade, had he not?

A. Yes, First West—or, First North and West Mercer.

Q. And what was the date that he acquired that?

The Court: You are talking about Morris?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: No, the date that Mr. Forster acquired that piece of property. Pardon me.

A. I have a recollection it was three or four years prior to this arrangement.

Q. (By Mr. Obenour): And that is the piece of property that was shown in Exhibit 2, the tax return of 1946 for Mr. Forster as being acquired for the price of ten thousand dollars, showing you the schedule attached to Exhibit 2? A. Yes.

Q. On the real estate?

A. The cost was $10,000, yes.

Q. And this property was subsequently sold to Mr. Morris, was it not? [3913] A. It was.

Q. Did you take part in this transaction of the sale of this Denny Regrade property from Mr. Forster to Mr. Morris?

A. It is my recollection that I did, yes.

Q. There was no other person that participated in this sale, was there, except yourself, Mr. Forster and Mr. Morris?

A. Just the three parties, yes.

Q. There were no attorneys involved?

A. I do not recall that there was.

Q. There was no real estate man involved?

A. I don't believe so.

Q. At that time, Mr. Forster then owed a certain balance on this note, Exhibit 286, is that correct?

A. The note displays that, I believe, yes.

Q. Was that transaction then of the sale of the Denny Regrade property from Mr. Forster to Mr.

(Testimony of L. Hicks Taylor.)

Morris handled by charging off the unpaid balance of the note, Exhibit 286, that Mr. Forster owed to Mr. Morris against the price of the property Mr. Morris was acquiring?

Mr. LeSourd: If the Court please, I take it the record shows a continuing objection by us to all the inquiry on this subject?

The Court: Yes, the record may so show. [3914]

Mr. LeSourd: On the grounds previously stated?

The Court: Yes. If you have any particular objection as to form, or something like that, you may state it.

A. May I have that exhibit before me, please?

Q. (By Mr. Obenour): Which one, the note?

A. That note.

Q. Exhibit 286.

(Whereupon, Exhibit was handed to the witness by Mr. Obenour.)

Mr. LeSourd: May we have the pending question read, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:)

"Q. Was that transaction then of the sale of the Denny Regrade property from Mr. Forster to Mr. Morris handled by charging off the unpaid balance of the note, Exhibit 286, that Mr. Forster owed to Mr. Morris against the price of the property Mr. Morris was acquiring?"

A. The consideration for the property, definitely understood [3915] by Mr. Morris, Mr. Forster and

(Testimony of L. Hicks Taylor.)

Mr. Taylor, was $14,500. At a later date, or near the date application was made on this note for some type of a settlement on this note.

Q. (By Mr. Obenour): Would you answer the question, please, Mr. Taylor?

A. I felt that I did. That is the exact fact.

Q. Did Mr. Morris pay Mr. Forster anything for that property?

A. $14,500 was a contract price.

Q. Did Mr. Morris pay Mr. Forster any money in cash for that property? A. He did not.

Q. How was Mr. Forster paid for that property that he sold to Mr. Morris?

A. It was in a settlement upon the final note.

Q. Exhibit 286?

A. 286 was finally settled, yes.

Q. And then they charged the unpaid balance of the note, 286, against the purchase price Mr. Morris was to pay for the Denny Regrade property?

A. Not against the purchase price; an agreed closing price on the contract.

Q. Wouldn't that be the purchase price? [3916]

A. No, it was not. The purchase price was $14,-500.

Q. When did this transaction take place, the sale from Mr. Forster to Mr. Morris?

A. To the best of my recollection, sometime in January of 1946; in that neighborhood.

Q. January, 1946?

A. It was my impression it was. I am not sure.

(Testimony of L. Hicks Taylor.)

Q. There is a series of figures on the back of Exhibit 286 there starting from June, 1944——

A. (Interposing) Yes.

Q. (Continuing) ——through December, 1945, is it, or what is the last entry?

A. Well, it appears to be December of 1945.

Q. Those represent the payments by Mr. Forster upon the note to Mr. Morris?

A. Yes, they do.

Q. And what is the balance then from the last payment made by Mr. Forster to Mr. Morris on that note, Exhibit 286? A. $12,680.

Q. Now, that would be the balance, then, that Mr. Forster owed Mr. Morris for the Daisy Ice Cream Company?

A. That he would owe on this note.

Q. That is right, and that would be the balance of [3917] the unpaid purchase price for the entire property?

A. That I would not be sure of.

Q. Was it paid in cash, the other price, other than that note, was paid in cash, was it not?

A. That I am not sure of, no.

Q. That would represent the——

A. (Interposing) This represented a balance.

Q. A balance? A. A balance.

Q. You knew of no other?

A. I don't know what transaction Mr. Morris and Mr. Forster might have had that I knew nothing about.

(Testimony of L. Hicks Taylor.)

Q. But at the time this property was sold to Mr. Morris, it was $12,886?

A. That is what this record purports to show, yes.

Q. Now, that was then charged against the price Mr. Morris was to pay for the Denny Regrade property?

A. I have been trying to explain that. The contract price of that real estate was fourteen thousand five hundred dollars. Whatever settlement was made on this note was some other arrangement.

Q. You were there, weren't you?

A. I was there, yes.

Q. Those are your figures on the back there, aren't [3918] they?

A. That is correct, yes.

Q. You computed the balance, did you not?

A. That is right.

Q. And what figure did you use for the price Mr. Morris was to pay Mr. Forster for the Denny Regrade property?

A. You are putting into this question something that did not exist. The purchase price was $14,500.

Q. What price was Mr. Forster credited as receiving for the Denny Regrade property?

A. Now, the answer is that the settlement against this note was made on a basis of $15,500. It had nothing to do with the real estate.

Q. That was the price, was it not, that Mr. Forster was credited as receiving for the Denny Regrade property? A. It was not.

(Testimony of L. Hicks Taylor.)

Q. How did you reach the——

A. (Interposing) $14,000. That is something that a discussion was had on, and I don't just remember the details.

Q. You were present?

A. I was present, yes.

Q. You took fifteen thousand five hundred for the [3919] figure you used in your computation?

A. That was the settlement of this note, yes.

Q. Was that $15,500?

A. Fourteen thousand five hundred real estate and some adjustment of one thousand dollars.

Q. $14,500 real estate, and some adjustment of one thousand dollars? A. That is right.

Q. Does that adjustment show on there?

A. I probably did not write the details here. They are not here.

Q. There was no change in the price Mr. Forster was to pay Mr. Morris for the Daisy property, was there?

A. A reduction of one thousand dollars, yes.

Q. And you recall then that the price Mr. Forster was to pay Mr. Morris was reduced one thousand dollars? A. That is correct.

Q. A year and a half later, he is credited one thousand dollars, he did not have to pay?

A. You say a year and a half?

Q. Yes, according to the date of the payments on that note?

A. December, 1945, I believe, and January, 1946, are the dates. [3920]

(Testimony of L. Hicks Taylor.)

Q. What is the first date?

A. December, 1945.

Q. And a year then, a year later, he is credited an additional one thousand dollars?

A. It wouldn't be a year later. It would be in the following month.

Q. What is the date of the note, please?

A. I apologize, Mr. Obenour. May 1, 1944.

Q. And the date of this transaction was January, 1946. It would be a year and a half later he is credited with one thousand dollars?

A. That is correct.

Q. Was that explained to you when you used this 15-5 figure?

A. Yes, at the time it was discussed.

Q. Why wasn't the $12,886 figure reduced one thousand dollars then?

A. It could have been.

Q. Was it?

A. It wasn't, but it could have been.

Q. What figure did you use?

A. I used the lump sum of $15,500.

Q. Why did you add one thousand dollars then to the sales price of the Denny Regrade property if there was a credit to the note? [3921]

Mr. LeSourd: Objected to, your Honor. The note doesn't so show.

The Court: Objection sustained.

Mr. Obenour: He said the sales price was 14-5, and he used 15-5 in his computation.

(Testimony of L. Hicks Taylor.)

The Court: The Court sustained the objection. I suggest you may go ahead.

Q. (By Mr. Obenour): 14-5 was the sales price?

A. That was the contract price made between Mr. Forster and Mr. Morris.

Q. When was that agreed?

A. As to dates, I cannot say, but it would have been within this period.

Q. Within what period?

A. January, 1946.

Q. Did you have more than one meeting with Mr. Morris and Mr. Forster to discuss payment of this price? A. It is possible.

Q. Do you recall? A. No, I do not.

Q. It could have been that this price at the time that the Denny Regrade property price was agreed upon was also the same price at which you made these computations? A. It was not. [3922]

Q. Would you show the jury what those figures are on the back of that 286, please?

The Court: You wish the jury to see them?

Mr. Obenour: Yes, please.

The Court: You cannot expect the witness to go over there.

Mr. Obenour: I meant if he would indicate what they were.

The Court: The Bailiff will hand it.

(Whereupon, there was a brief pause, while the exhibit was handed to the jurors.)

The Court: If you have a question or two on this, you may ask it, Mr. Obenour and then we will

(Testimony of L. Hicks Taylor.)

go on to something else. We have had enough time on this.

Q. (By Mr. Obenour): What were you computing on those figures on the back of the note, Mr. Taylor? A. The settlement of the note.

Q. The settlement of the note? A. Yes.

Q. And the balance of two thousand some dollars there—or, three thousand some dollars—is what figure—is that the balance that Mr. Morris paid in cash? [3923]

A. As I recollect it, yes.

Q. Do you remember the figure?

A. I can't say exactly; $2,288, I believe.

Q. And Mr. Morris paid Mr. Forster that in cash?

A. I believe the record shows he received a check for it.

Q. So that Mr. Forster received credit then for the unpaid balance of his note of $12,886 and $2,288 in cash?

A. And $1,000 credit against the contract, on the note.

Q. The note was settled outright, wasn't it?

A. That was the final settlement on the check, yes.

Q. The unpaid balance of the note; he was credited with the unpaid balance of the note?

A. Correct.

Q. And that is $12,886? A. Yes.

Q. And he received $2,288 in cash?

A. Correct.

(Testimony of L. Hicks Taylor.)

Q. And that is a total of $15,500, is it not?

A. I don't know until I see the items of it.

The Court: That is a matter of addition. [3924]

Mr. Obenour: It is merely a computation of the note, whatever it is.

Q. (By Mr. Obenour): Then, Mr. Forster received, in cash and credit upon money he owed Mr. Morris, 15,500 and some odd dollars?

Mr. LeSourd: Your Honor, I object.

The Court: You have gone over that one-half dozen times. The Court will sustain the objection. Mr. Obenour, if we can get the questions without going over and over again.

Mr. Obenour: I was trying to get an answer.

The Court: If he can't answer, we will go along. It speaks for itself.

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Regarding Finstad and Utgard, you were present when that—when Mr. Forster went to Conway to discuss that matter; first, to inspect the Finstad and Utgard property?

A. There were four or five of us there, yes.

Q. You were present? A. Yes.

Q. You inspected the books prior to purchase?

A. No, I did not. [3925]

Q. Did you go up to Conway with Mr. Forster before the meeting in Mr. Croson's office to inspect the property, and to inspect the books?

A. Well, I am not particularly clear as to what was before, or behind the situation.

We—the first indcation that Mr. Forster desired

(Testimony of L. Hicks Taylor.)

purchase of that was when Mr. Cook and Grant and Mr. Egeness and Mr. Forster and I went to Conway. It was my recollection it was the first time that I had knowledge of it.

Q. Did you inspect the books on that occasion?

A. The books were not there that particular time. I believe Mr. Black was working on them at that time, bringing them up to date.

Q. Did Mr. Forster discuss with you the purchase of this property before the actual purchase was made? A. It is possible.

Q. Did you believe Mr. Forster should purchase this property?

A. If I remember right, I did not think it was a very——

Q. (Interposing) Did you express your opinion to Mr. Forster that he should not purchase this property?

A. I am not positive, but I believe I did.

Q. Did Mr. Forster say anything to you, explaining [3926] why it would be a good deal to purchase this property?

A. I don't believe that I recollect his statements on it.

Q. When did you first—did you know that Mr. Cook, Mr. Grant, and Mr. Egeness were charging their salary accounts for payments upon their contract to Mrs. Finstad?

A. Might I ask you: Did you say, when did I?

Q. Did you know?

A. Not until I saw the books.

(Testimony of L. Hicks Taylor.)

Q. When was that?

A. I believe that was a later trip to Conway.

Q. Was that before or after Mr. Forster purchased Finstad and Utgard?

A. I am not positive of that. I was not in on all the transactions, so I am a little puzzled, as to dates on that.

Q. But you did know that that was the manner in which Mrs. Finstad was being paid prior to Mr. Forster's acquiring their interest?

A. I obtained the information from the books, yes.

Q. Whose idea was it to pay Mrs. Finstad on Mr. Forster's contract through the charging of salary of Mr. Egeness? [3927]

A. It was discussed and thought it was a proper way.

Q. By whom was it discussed?

A. Mr. Forster and Mr. Egeness and myself.

Q. When was that?

A. That date, I don't know as I can say. One of the times when we were there.

Q. No payments were missed from the time Mr. Forster acquired the property, was there, on the payment of the contract to Mrs. Finstad?

A. Not that I recollect.

Q. Mr. Forster resumed payments of that contract from the June meeting of 1943 when he acquired the property, did he not?

A. That is my recollection.

Mr. LeSourd: Just a moment. Object to the

(Testimony of L. Hicks Taylor.)

form of the question. It assumes Mr. Forster made the payments and the evidence in the record shows Mr. Egeness made the payments.

The Court: I believe it is well taken, Mr. Obenour.

Mr. Obenour: Yes, sir.

The Court: Do you wish to restate it?

Q. (By Mr. Obenour): The payments of three hundred dollars charged [3928] to Mr. Egeness's account began from the date that Mr. Forster entered into this contract to purchase this property, did it not? A. The records shows that, yes.

Q. And you were aware of it from that time?

A. Yes.

Q. Did you direct Mr. Egeness to make those entries?

A. Did I direct Mr. Egeness to make the entries?

Q. Yes, in his books, in the books kept there at Finstad and Utgard, charging his account?

A. He prepared all the checks.

Q. Did you instruct him to do that?

A. Well, that was the agreement.

Q. Did you instruct him or how did that come about?

A. When you say "instruct", you mean did I tell him how to write the checks?

Q. Yes. A. No, I did not.

Q. Did you tell him how to charge his account for these checks?

A. Well, he knew that he was going to charge his account.

(Testimony of L. Hicks Taylor.)

Q. And when you prepared the tax returns for [3939] Finstad and Utgard, you showed the full $7200 for Mr. Egeness? A. I certainly did.

Q. And also on Mr. Egeness' personal return?

A. I certainly did.

Q. Did you know that that was being paid upon Mr. Forster's contract?

Mr. LeSourd: Objected to, your Honor. The contract is in evidence and does not show any contract between Mr. Forster and Mrs. Finstad.

The Court: What is the question, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

Mr. Obenour: Did he know that the payments were being made upon Mr. Forster's contract?

The Court: Is that the question?

(Whereupon, the following was read by the reporter:)

"Q. Did you know that that was being paid upon Mr. Forster's contract?"

Mr. LeSourd: The contracts are here in evidence, and shows that, Mr. Egeness's contract with Mrs. Finstad, but shows no contract between Mr. Forster and Mrs. Finstad.

The Court: The question is as to his knowledge of the payment.

Mr. LeSourd: But the question is as to [3930] his knowledge—I can't quote the question exactly —made on Mr.——

The Court: (Interposing) The objection is to the form of the question?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: That is correct, your Honor. The question says, "made on Mr. Forster's contract". The question then is contrary to the documentary evidence in the case.

The Court: Does that appear to be correct?

Mr. Obenour: No, sir; it is not. I would read the contract if counsel desires. He has indicated what he believes the contract to be.

Mr. LeSourd: The contract between whom?

The Court: What exhibit is that?

Mr. Obenour: It is Exhibit 145, agreement to assign agreement for sale of stock, dated the 3d day of December, 1941, and signed by Mr. Grant, Mr. Egeness, Mr. Cook and Mr. Forster, and Mary Finstad.

Mr. LeSourd: Just a moment. That is a misrepresentation, if the Court please. It isn't signed by Mary Finstad. It merely contains a clause at the bottom consenting to the agreement, and there is no contract between Mr. Forster and Mrs. Finstad. Mr. Egeness testified he was liable to Mrs. Finstad.

The Court: Isn't the question here whether Mr. [3931] Taylor knew that these payments were being applied to Mr. Forster's obligation?

Mr. LeSourd: That is what we are objecting to. There was no obligation by Mr. Forster to Mrs. Finstad.

The Court: What was it then that Mr. Forster had an obligation——

Mr. LeSourd: (Interposing) Mr. Forster had a contract with Mr. Egeness and his associates, and

(Testimony of L. Hicks Taylor.)

he had a contractural relationship with them, but he had no obligation to Mrs. Finstad, whatever.

The Court: However, the only matter here is whether some payments were applied to some obligation, regardless of who was obligated.

Mr. LeSourd: Then I have no objection.

The Court: Do you have the question? Do you want to state the question?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Were you aware that these payments being charged against Mr. Egeness's salary account were being paid upon Mr. Forster's obligation?

The Court: I think that is objected to.

Mr. Patten: I don't think Mr. LeSourd's analysis of the contract is the issue at all. [3932]

The Court: We are not concerned about the obligation, but about knowledge. I will ask the question.

Mr. Taylor, were you aware, did you have any knowledge of payments being applied to this transaction of which Mr. Forster was a part?

The Witness: The checks were made out to Mrs. Finstad and charged to Mr. Egeness's salary account on the books of Finstad and Utgard.

Mr. Egeness, to my knowledge, was buying an interest in the Finstad and Utgard.

The Court: Is that clear?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Why did you think Mr.

(Testimony of L. Hicks Taylor.)

Egeness was buying an interest in Finstad and Utgard?

A. The books displayed the exact transaction.

Q. What books displayed it?

A. Finstad and Utgard books.

Q. In what way?

A. The ledger account of Verne Egeness shows he was credited each month with $300.

Q. Then through the credit on your ledger you say it shows that he was purchasing an interest from Mrs. Finstad? A. That is correct.

Q. Were you present when this agreement between Mr. Forster and Mr. Grant and Mr. Egeness and Mr. Cook was made, Exhibit 145?

A. I attended one meeting at Mr. Croson's office. I did not read any of those agreements, and did not know exactly what they contained.

Q. Were you present when Mr. Forster paid checks to Mr. Cook, Mr. Grant and Mr. Egeness at this meeting for their share of their interest in this corporation?

A. You are referring to some particular date?

Q. Yes, sir, the time, that January—rather, June,—June 26, 1943.

A. Is there any evidence anywhere to show that I knew about it? I don't remember it.

Q. I am asking if you do know?

A. I do not remember it.

Q. Did you know that Mr.—were you present at the time the price was being discussed between

(Testimony of L. Hicks Taylor.)

Mr. Forster and Mr. Cook and Mr. Grant and Mr. Egeness?

A. I have no memory of that.

Q. Did you know Mr. Cook, Mr. Grant and Mr. Egeness had an interest in this Finstad and Utgard Company at the time Mr. Forster purchased it?

A. Yes, I knew that.

Q. From whom did you think Mr. Forster was purchasing his interest in the corporation? [3934]

A. Mrs. Finstad and Mr. Grant, Cook and Egeness.

Q. If you thought Mr. Forster was buying the interest of Mr. Egeness, Mr. Cook and Mr. Grant, then how did you believe Mr. Egeness was still buying a share of this company?

A. That was an agreement made.

Q. Between whom?

A. Mr. Forster, Mr. Egeness and myself present.

Q. Then, regardless of these written contracts and agreements and matters that took place at the Directors' meeting, at which you were present, did you believe Mr. Egeness was buying a 25 percent interest in Finstad and Utgard?

A. That is absolutely my belief.

Q. And what was the basis of that belief, again? Why did you think that?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): How long did you be-

(Testimony of L. Hicks Taylor.)
lieve that Mr. Egeness was buying a 25 percent interest?

A. Until the day I left Seattle.

The Court: The question is, how long?

Mr. Obenour: Yes, sir. [3935]

Q. (By Mr. Obenour): And then you learned what to be the correct fact?

Mr. LeSourd: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): And then, from 1944—1943 until 1950, you believed Mr. Egeness was buying a 25 percent interest in the stock through these regular quarterly payments of $300?

A. That is correct.

Mr. Obenour: May I have exhibits 17 and 21?

(Whereupon, exhibits were handed to Mr. Obenour by the clerk.)

Mr. Obenour: And 21-2-3-4 and 5.

(Whereupon, exhibits were handed to Mr. Obenour by the clerk.)

Q. (By Mr. Obenour): I believe you stated that the other information contained in these tax returns you prepared did not pertain to actual figures, was from your own information, is that correct? The other information other than the actual figures contained in the tax return?

(Testimony of L. Hicks Taylor.)

The Court: Would you read that question, Mr. [3936] Reporter?

(Whereupon, the preceding question was read by the reporter.)

Mr. LeSourd: Excuse me, your Honor, I would suggest that when questions of this sort are put by counsel, that he show the witness what he is inquiring about. He holds up some document and then asks the witness with regard to it.

The Court: It depends on the question. Would you read the question again, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

The Court: You may strike the question.

Q. (By Mr. Obenour continuing): Then, in 1945, when you prepared Exhibit 17, the tax return for Finstad and Utgard, you believe Mr. Egeness held 25 per cent interest in this company?

Mr. LeSourd: Objected to, your Honor, assuming he held it. The testimony was that Mrs. Finstad held all the stock.

The Court: Hasn't he stated he believed that from the time it started until 1952?

Mr. Obenour: Yes, sir.

The Court: Hasn't that been answered? [3937]

Mr. Obenour: Yes, sir; he stated it was his belief through that time.

The Court: You are just re-asking the question?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: No, sir; I am asking him, at the time he made out this return.

The Court: What date is that?

Mr. Obenour: All right, I will withdraw the question, then.

The Court: What date is that exhibit?

Mr. Obenour: This is the tax return for 1945, dated 4th of February, 1946.

The Court: That happened between the dates?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Why, then, did you show no interest in the tax return for 1945 as held by Mr. Egeness on that return?

A. Mrs. Finstad held all the stock.

Q. She held all the stock? A. Yes.

Q. For how long a period?

A. I have heard some testimony about it being issued since coming to court.

Q. Did she hold it, according to your belief, until 1950? A. She did. [3938]

Q. And that was true when you prepared the return for 1946?

A. Yes, each year.

Q. And, then, why did you show, in 1948, that Mr. Egeness held one percent of the common stock and also in 1949 that Mr. Egeness held one percent of the common stock in the tax return?

A. He held a qualifying share, is my understanding.

Q. Is that one percent?

A. I didn't say. That doesn't say one percent.

(Testimony of L. Hicks Taylor.)

It does say, but one share is what it was intended for.

Q. The tax return shows one percent?

A. It does, by the way it is written, yes.

Q. Why didn't you show the 25 percent that you believed he was buying?

A. Would it make any difference?

Q. You say——

The Court: (Interposing) That isn't the question, Mr. Taylor.

A. (Continuing) The stock was all in Mrs. Finstad's name, under her control. I don't see why I should put in 25 percent.

Q. (By Mr. Obenour): Then, if that is true, if she held it all, [3939] why did you show him as owning one percent?

A. I think my intention was one share.

Q. Then she wouldn't own all of it, would she?

A. She could own it all by endorsement of certificate.

Q. Do you think Mr. Forster owned that?

A. Do I think he owned that?

Q. Yes, do you think Mr. Forster owned that share, or any interest, in Finstad and Utgard between the years 1945 to 1949?

A. He had no shares in his name.

Q. Did he own any interest, to your knowledge, in Finstad and Utgard between the years 1945 and 1949?

A. He owned a contingent interest in it.

(Testimony of L. Hicks Taylor.)

Q. Who owned Finstad and Utgard—to your knowledge—in 1945 to 1949?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained.

Q. Would you differentiate, please, your idea of contingent interest in the ownership of Finstad and Utgard? A. I don't believe I understand.

Q. Is this one percent Mr. Egeness owned a contingent interest? [3940]

Mr. LeSourd: Object to the form of the question. He testified it was one share, and not one percent.

Mr. Obenour: In the tax return, it is one percent.

Mr. LeSourd: I think the only thing typed in is a "1". The printed matter may have a percentage. The question is improper as put.

The Court: The objection may show. If you wish to restate it, you may.

Mr. Obenour: It is recess time.

The Court: Do you want to let the question go? All right. Ladies and Gentlemen of the Jury:

We will take the mid-morning recess, and the Court asks you to read on this occasion the admonition given to you on earlier occasions of this character. You may now be excused, and the Court will remain in session while you leave.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 11:01 o'clock a.m., a recess was had in the within-entitled and numbered cause until 11:17 o'clock a.m., April 15, 1954,

(Testimony of L. Hicks Taylor.)

Q. Did you believe Mr. Forster had an interest in this period 1945 to 1949?

A. He had a contractual interest, yes.

Q. How much? A. I don't know.

Q. Did you have any idea?

A. Somewhat, yes.

Q. What was your idea?

A. I have a recollection of a purchase price of some sixty-seven thousand dollars.

Q. And what was he purchasing?

A. The contractual interest of the three gentlemen mentioned, Cook, Grant and Egeness.

Q. Contractual interest in what?

A. In the capital stock.

Q. What capital stock?

A. Finstad and Utgard. [3944]

Q. How much of it?

A. The escrow gave him the right to purchase it all.

Q. So, you believed he was purchasing all of the stock at the same time Mr. Egeness was purchasing 25 percent of it?

A. That was a separate agreement.

Q. With whom? A. Mr. Egeness.

Q. Who was Mr. Egeness purchasing his 25 percent from?

A. He was paying the contract to Mrs. Finstad through the books of Finstad and Utgard.

Q. Was he buying his 25 percent then from Mrs. Finstad?

(Testimony of L. Hicks Taylor.)

A. I would say "yes", because all the stock was in Mrs. Finstad's control.

Q. And then, who was Mr. Forster buying from?

A. Mrs. Finstad.

Q. Then, Mrs. Finstad was selling 25 percent to Mr. Egeness and 100 percent more to Mr. Forster?

A. Through separate agreement, Mr. Egeness was purchasing his shares of stock.

Q. How could Mrs. Finstad sell 125 percent of the stock? [3945]

Mr. LeSourd: Objected to as argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you believe Mr. Forster had 100 percent interest in the stock?

A. Subject to Mr. Egeness' agreement.

Q. Then, why, in Exhibit 123, the financial statement of Mr. Forster for February 29, 1948, did you show Mr. Forster as being the sole owner of Finstad and Utgard?

A. He was the sole owner of an agreement, yes.

Q. Does that say "of an agreement", or does that say "sole owner of Finstad and Utgard"?

A. It says "sole owner".

Q. Of what?

A. Of Finstad and Utgard.

Q. December 31, 1948, in the financial statement of Mr. Forster prepared by you, Exhibit 122, how was that shown? A. "Sole owner".

(Testimony of L. Hicks Taylor.)

Q. In Exhibit 121, the financial statement for December 31, 1949, how was it shown there?

A. "100 percent".

Q. Those were prepared by you?

A. Yes. [3946]

Q. How, then, can you report to the Peoples Bank, for whom those financial statements were prepared, that Mr. Forster was a sole owner of Finstad and Utgard in the same years when you say he had no interest? A. He had——

Mr. LeSourd (Interposing): Just a moment, Mr. Taylor. I will object to the question.

The Court: Objection sustained.

Q. (By Mr. Obenour): How can you show he is the sole owner in those periods?

Mr. LeSourd: Same objection, argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour): Why did you show he owned 100 percent of the stock at that time?

A. It doesn't show sole owner of stock. He is sole owner of a contractual arrangement with Mrs. Finstad, and the bankers were thoroughly familiar with that, because it was thoroughly explained to them.

Q. Where? A. At the bank.

Q. What was thoroughly explained to them?

A. Thoroughly explained to them the purchase [3947] of Finstad and Utgard.

Q. That Mr. Egeness was purchasing 25 percent of the stock?

(Testimony of L. Hicks Taylor.)

A. I don't know that they had any connection with that. It was none of their business.

Q. Well, what was thoroughly explained to the bank then?

A. The contractual arrangement of Mr. Forster to purchase Mrs. Finstad's stock that was in control of Mr. Cook, Grant and Egeness.

Q. And also the stock of Mrs. Finstad?

A. That is what I stated.

Q. Who did explain all this, do you know?

A. Mr. Forster discussed it with them before he discussed it with me, is my opinion.

Q. How do you know this?

A. It is my recollection that some of the bankers talked to me about it before I knew he was going in it.

Q. About what; what did they tell you?

A. That Mr. Forster was interested in Finstad and Utgard.

Q. 100 percent?

A. No percentage discussed.

Q. Did they tell you they understood Mr. Egeness was buying 25 percent? [3948]

A. I don't know that the bank ever knew it.

Q. Well, if the bank didn't know it, then why did you show 100 percent interest in each of those various statements for Finstad and Utgard?

A. It is possible that the bank asked me to put it that way.

Q. Is it true that they did?

A. I don't know; I wouldn't say.

(Testimony of L. Hicks Taylor.)

Q. Is there any basis that it would be possible for your statement? A. I don't know.

Q. Mr. Egeness' interest is not shown any place there, is it?

A. I believe that it is not.

Q. Do you remember a discussion with Mr. Hagstrom?

A. I discussed items with Mr. Hagstrom, yes.

Q. Do you remember a discussion of Mr. Forster's net worth with Mr. Hagstrom?

A. It is possible.

Q. Do you remember telling him that Mr. Forster owned 100 percent interest in Finstad and Utgard? A. That I do not remember.

Q. December 31, 1949, the figures for that year were prepared by you at what date again, please?

A. In January. [3949]

Q. For Issaquah Creamery?

A. In January, 1950.

Q. Where? A. At Issaquah.

Q. And how did you go about preparing those figures?

A. The usual monthly preparation.

Q. And as I understand it then, you went to Issaquah and got your regular figures from Mr. Erickson and compiled your work sheet, which is Exhibit 259-A?

A. May I have the work sheet, please?

Q. Pardon me, 259.

(Whereupon, exhibit was handed to the witness by Mr. Obenour.)

(Testimony of L. Hicks Taylor.)

Q. (Continuing): Is that correct?

A. I don't know what your question is, I am sorry.

Q. Is that the work sheet you prepared?

A. This is——

Q. (Interposing): January, 1950, at Issaquah Creamery, compiling the figures you obtained from Mr. Erickson for the year for that corporation?

A. Yes, this is the work sheet.

Q. You prepared it from the books?

A. I did.

Q. And are all those figures in those columns [3950] your original figures?

A. I don't see anybody else's figures on here.

Q. In other words, you would go through each of those columns and make the entries listed there?

A. This is a trial balance from the ledger, yes.

Q. And referring now to—this is a trial balance on the left-hand side of Exhibit 259?

A. Yes.

Q. And you would list your assets, cash, bank, notes receivable, and so forth, and make your entries directly opposite?

A. That is correct.

Q. And, similarly, for the right-hand side, is the profit and loss statement for that date for that company? A. That is correct.

Q. And you would put all of those entries in?

A. Yes.

Q. Now, these others in the blank column on

(Testimony of L. Hicks Taylor.)

your left-hand side on your balance sheet side were put in after that?

A. That is correct.

Q. There are five entries, and they were all put in after you completed this, is that correct? [3951]

A. After I completed it?

Q. Yes.

A. This is complete after arriving at those figures.

Q. Well, at the time you first worked out this work sheet, these figures were not entered in that column, were they; the five figures in the blank column there?

A. No, they were not there.

Q. So, except for these five figures, this was the page in this form that you completed on that original date at Issaquah without discussing with anyone? This was your original work sheet?

A. That was the original work sheet, yes.

Q. And it was in that form that you then discussed it with Mr. Forster and Mr. Erickson?

A. That is correct.

Mr. Griffin: I wonder if he could identify those five figures? It means nothing.

The Court: Yes, could you do that?

Mr. LeSourd: If your Honor please, I would like to ask whether his inquiry is in this form even after these changes? His questions are very ambiguous as to what he means by "this form". [3952]

The Court: I think, first, you can identify the five figures. Your objection is to the question?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Yes, it is ambiguous, whether he means this form as it exists after the corrections were made, or whether he means before the corrections were made.

The Court: Mr. Obenour, if you will relate the five figures to the exhibit and then if you will restate your question.

Mr. Obenour: The five figures in the column in the center of the page, and to the right, or the left-hand portion, designated "trial balance" opposite real estate there, $32,978.70; and on the line for improved, $230,670.32; and in the line to the right of the column, the thirty-two thousand figure, the inventory on that line and the Alpine Ice Cream for the second, and then on the line of accounts payable, $51,570.76; there are milk drafts, ten thousand; taxes paid, $197,039.06.

The Court: Does that identify them sufficiently?

Mr. Griffin: Yes, your Honor.

The Court: Now, do you have a question, Mr. Obenour? [3953]

Q. (By Mr. Obenour): Were all of the other figures in the regular columns that you have referred to in the trial balance and the profit and loss placed there at the time you first completed your work upon this work sheet on the first date you went to Issaquah?

Mr. LeSourd: I suggest that the document be handed to the witness so that he can examine it to see if any changes were made.

(Testimony of L. Hicks Taylor.)

(Whereupon, document was handed to the witness by Mr. Obenour.)

Mr. LeSourd: And may I suggest that counsel in the question refer to specifically what figures he is talking about. There are many figures on that sheet, and some of them have been changed, and corrections made.

The Court: As I understand, you are referring to all entries except the five you referred to?

Mr. Obenour: Yes, sir.

A. This is Schedule 259. The original trial balance on the two left-hand columns were taken from the general ledger. This is my trip to Issaquah on approximately the 28th of January, 1950. From those figures, I prepared a balance and a profit and loss statement showing or displaying a year's profit.

Do you have any further question there? [3954]

Q. (By Mr. Obenour): Those figures then were entered by you on that date that you made up that sheet? A. Yes, I prepared this sheet.

Q. And with the exception of those five figures previously referred to was in the form that you had that document when you talked to Mr. Forster and to Mr. Erickson? A. That is correct.

Q. And that was in the same afternoon after you had completed your work sheets?

A. That was in January, 1950, yes.

Q. Mr. Forster was present and Mr. Erickson was present? A. As I remember, yes.

Q. What did you say to Mr. Forster concerning your work sheet?

(Testimony of L. Hicks Taylor.)

A. I discussed the profit and loss at that time with Mr. Forster and the balance sheet and to the best of my recollection, it showed a sizable profit.

Q. What was that profit?

A. As I remember it, it was around $101,000 or $100,000.

Q. Do you have any figures to substantiate your recollection, or is that strictly your recollection?

A. I am strictly speaking from recollection. I could give you the exact figures by adding them together, if you would like me to.

Q. Would it show there on your work sheet what the figure was at that time?

A. No, it would take two figures, I would have to add them together.

Q. What figures would those be?

A. The profit on this statement shows $49,725.48; the reduction was $51,578.76.

Q. Where was that figure, the $51,000 figure?

A. It shows in a column, an explanation column, or an adjustment column, that generally shows on a work sheet.

Q. Would you point it out, please?

A. The figure that I am using appears right here, on this work sheet, and the amount is $51,578.76. It is very faint, right there, (indicating); right at that point.

Q. That is one of the five figures that we have previously identified?

A. That is one of the five figures in the column.

(Testimony of L. Hicks Taylor.)

Q. What did you tell Mr. Forster then as to what the net profit for the year 1949 was?

A. $101,304.24. [3956]

Q. What did Mr. Forster say?

A. He said it was impossible; that nobody was making any such money, and that we were 'way out of line.

Q. Did he say anything else?

A. He said that he felt maybe he would have to get some other accountant to check it over, and said there was some bad mistake somewhere, and I immediately told him that those figures agreed with my ledger, if there was any error, that if he and Harold would check them over, I would hold the ledger open so that adjustments could be made.

Q. Did you tell him that your figures were correct or not?

A. I said "They are correct, according to my ledger."

Q. And what did he say?

A. He said he was sure there was something wrong.

Q. Did he say anything else; is that all he said?

A. Well, except that he thought he would get some other accountant to check it over.

Q. What did you say then when he told you he would get another accountant to check it over?

A. I do not remember my remarks. [3957]

Q. You discussed this work sheet on this occasion the same way you had discussed your other work sheets that you had prepared, didn't you?

(Testimony of L. Hicks Taylor.)

A. That is the usual practice, yes, sir.

Q. And had he ever contested any of your figures before?

A. Oh, I presume so. I don't have any great recollection of it. We have discussed them.

Q. Do you remember whether or not he ever had? A. Oh, I would say he had, yes.

Q. You discussed every work sheet with him, didn't you?

A. As a—take it as a whole, we did. We might have missed one now and then.

Q. You would go out there on the days he would be present so that you could discuss it?

A. That was the intention, yes.

Q. And you do not remember any other time he contested your figures?

Mr. LeSourd: I object as repetitious, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): Did Mr. Forster have any figures to show why your figures were wrong?

A. He had the work sheet.

Q. Did he have any figures of his own to show that your figures were not correct?

A. That, I cannot recollect.

Q. Did he say anything why he thought your figures were wrong?

A. I have recollection of him saying that the percentage, or something, was out of line, but I didn't follow it very closely.

(Testimony of L. Hicks Taylor.)

Q. Mr. Forster was interested in knowing what his net profits were, was he not?

That is the reason you were preparing these statements?

A. That was the intention and purpose.

Q. Why was Mr. Forster then so upset about finding out he had made so much more money than he thought he had?

A. That would be hard for me to explain.

Q. Did you ask him why he would hire an accountant because he made, according to your figures, more money than he thought?

A. I didn't discuss it or argue the point with him.

Q. Did he make any statement about why he was so upset about making more money? [3959]

A. I don't recollect any definite conversation about it.

Q. Did Mr. Erickson say anything about the fact that he had made more money than he thought?

A. I don't believe Mr. Erickson commented.

Q. And Mr. Erickson simply left at that time, is that it?

A. The way it was left was that if Mr. Forster and Mr. Erickson found that I was in error, that I would hold the ledger open and make the proper adjustments.

Q. And you left your ledger open?

A. I did.

Q. For how long?

(Testimony of L. Hicks Taylor.)

A. To the best of my recollection, it was early in March.

Q. And then what happened?

A. I 'phoned Mr. Forster and asked him if there were any changes, if I should go ahead, and he said to get in touch with Mr. Erickson, that some changes had been found.

Q. Did you do that?

A. I went—I called Mr. Erickson and went to Issaquah.

Q. When was that? [3960]

A. The exact date, I am not sure of. It was in March.

Q. What happened when you got to Issaquah?

A. Mr. Erickson gave me the figures that show on this explanation column.

Q. What are those figures now that he gave you?

A. Ten thousand dollars to charge to milk drafts; and $51,578 to accounts payable.

Q. And you put those on the side?

A. I made a memorandum of them to make my changes, yes.

Q. What changes did you then make?

A. I revamped my balance sheet and profit and loss statement to include those figures.

Q. Did you alter the original figures that you had in the balance sheet opposite those additional figures?

A. I altered the ones that those figures fitted, yes.

Q. What alterations did you make?

(Testimony of L. Hicks Taylor.)

A. Erased the figures there, and——

Q. (Interposing) Where is that, please?

A. There on milk drafts, that must have been forty-five, and it was changed to fifty--five.

Q. And the others? [3961]

A. The accounts payable were increased by the amount of fifty-one.

Q. And then any other changes made?

A. The inventory was changed by ten thousand dollars.

Q. In what way?

A. By increasing from "12" to "22" thousand.

Q. What was the figure opposite the inventory then?

A. Oh, there was an item of $32,978. I don't know where I got that, except that I must have misunderstood Mr. Erickson, because he called my attention to it.

Q. When did you put that $32,000 figure down?

A. I wrote it down that same time.

Q. When Mr. Erickson told you? A. Yes.

Q. And he didn't correct it at the time you put it there?

A. He corrected it when I showed him these figures.

Q. He corrected it when you showed him these figures?

A. Yes, and I didn't go back and change the "1" in the explanation column, the inventory, to read [3962] $22,978.90.

(Testimony of L. Hicks Taylor.)

Q. And you raised the inventory, rather than lowered it? A. That is correct.

Q. Even though the figure thirty-two thousand shows opposite?

A. The thirty-two thousand was taken in error.

Q. And the other figure, the fifty-one thousand there, you used to increase your accounts payable, is that correct?

A. And the purchasing account, yes.

Q. And the purchase account; and milk drafts were increased by the ten thousand figure?

A. And that increased the purchases.

Q. And yet you say you did not use the thirty-two thousand figure, to reduce it to 22, but rather used another figure of correcting the twelve thousand original?

A. I used the correct figure that Mr. Erickson said the inventory was.

Q. All right, sir. Why did you make these changes?

A. I was told that those corrections were necessary to display the true profit.

Q. By whom were you told this? [3963]

A. Mr. Forster and Mr. Erickson.

Q. Was Mr. Forster there when he told you this; did he tell you this?

A. He told me there was changes to be made, yes.

Q. Did he tell you that this fifty-one thousand figure and the ten thousand dollar figure should be used to show a true profit?

(Testimony of L. Hicks Taylor.)

A. I don't know that he mentioned exact figures.

Q. When did he tell you those changes should be made? A. The day I 'phoned him.

Q. And you are referring only to the time you 'phoned? A. That is the date he told me.

Q. Was he present when Mr. Erickson gave you these figures? A. No, he was not.

Q. Mr. Erickson gave you these figures, then?

A. That is correct.

Q. And you used these figures in changing your balance sheet and profit and loss?

A. And in preparing the income tax return, yes.

Q. And why did you think that this $61,000 figure should be used to show a true profit and loss?

A. Would you kindly give me exhibits showing 1948 Issaquah Creamery Company tax return and 1949 Issaquah Creamery Company tax return, please?

Q. Yes, sir. You wanted the tax return?

A. The tax return, the corporation tax return.

Q. Exhibits 13 and 14.

(Whereupon, exhibits were handed to the witness by Mr. Obenour.)

A. I believe there was a question before. I have forgotten how it was put, Mr. Obenour.

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:)

"Q. And why did you think that this $61,000

(Testimony of L. Hicks Taylor.)

figure should be used to show a true profit and loss?"

A. (Continuing) When I returned to my office, I took from the file the copy of this 1948—the changes were on 1949—and I might explain that I am looking at Exhibit No. 12, the income tax return of the Issaquah Creamery, Incorporated, for the year 1948, and I am reading to you from the sales—the sales that year were $2,515,731.64. The net profit, after deducting the cost of sales and cost of goods sold—that means inventory plus purchases less inventory to arrive at the cost of goods sold. Cost of goods sold showed [3965] $2,216,589.13—the cost of goods sold taken from sales leaves a gross profit of $297,142.51. That was a profit—gross—for 1948.

I am now going to read you from Exhibit 14, which is the annual tax return of the Issaquah Creamery Company, Incorporated, for the year 1949. The sales were $2,359,544.27, approximately $190,000 less than they were in 1948. The costs of goods sold were $2,034,235.32 with a gross profit of $325,308.95 which was some $28,000 greater than the year 1948.

When I examined that I felt that Mr. Forster's decision on the profit was well taken, and did not feel that there was any error in the 1949 figures.

Q. You did that when you got back to your office? A. I did that, yes.

Q. But you had changed the figures on your work sheet before you got back to your office?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. Did you say anything to Mr. Forster about his finding, or their finding, Mr. Erickson and Mr. Forster, that your figures were off $61,000?

A. Did I say anything?

Mr. Keesling: We object to that, that his figures were off $61,000. The figures given him were off—I object to the form of the question. [3966]

The Court: Objection sustained.

Q. (By Mr. Obenour): Did you say anything to Mr. Forster objecting that your computations of the profit and loss should be reduced $61,000?

A. When Mr. Forster came to sign the tax return in my office, I thoroughly discussed this whole situation with him.

Q. And then you had a question, though, before you looked at your tax return, that those adjustments should be made? A. A question?

Q. In your mind, you had a question in your mind before you looked at the 1948 tax return that those adjustments should be made to the 1949?

A. I accepted them as being O.K.

Q. Why did you look at the 1948 return?

A. Just for comparison to see what the situation was. Mr. Forster had definitely stated that the percentage was out of line.

Q. Had there been an adjustment in 1948?

A. No, not to my knowledge; not to my remembrance.

Q. Why did you think 1948 should be right, rather than 1949?

(Testimony of L. Hicks Taylor.)

A. Mr. Forster stated at that meeting that the relative [3967] sale and the relative profit conditions were very similar in both years.

Q. Could there have been a similar adjustment at the end of 1948 that could have given that figure you entered there?

A. There was no adjustment, so far as I know, in 1948.

Q. You didn't look at the books to see whether or not they compared to 1948 and 1949?

A. I always prepared these returns from the books so I knew they were.

Q. Did you have an explanation what the fifty-one thousand dollar figure was?

Mr. LeSourd: Excuse me, your Honor. Was that question "do you" or "did you"?

Mr. Obenour: Did you.

A. They were given to me as statements not entered on the books.

Q. (By Mr. Obenour): What was told to you in addition to the figures themselves?

Mr. Griffin: By whom?

Q. (By Mr. Obenour continuing): And by whom?

A. Well, Mr. Forster said that some errors had been [3968] found, and so had Mr. Erickson. They both did.

Q. Mr. Erickson gave you this fifty-one thousand and ten thousand dollar figure?

A. He gave me the figures, yes.

Q. How did he give it to you?

(Testimony of L. Hicks Taylor.)

A. He gave me the amounts, and I wrote it on the work sheet.

Q. Did he tell them to you, or did he have them written down? A. That I don't remember.

Q. How did he tell you to make your entries for these figures?

A. He gave me the figures, and I wrote them on the work sheet.

Q. Did he tell you what they were?

A. Not the particular ones, no.

Q. Did he tell you just to add accounts payable fifty-one thousand? A. That is right.

Q. Did he say whether it was one amount, or not? A. I don't remember that.

Q. He just gave you a figure, fifty-one thousand plus? A. That is right.

Q. And said to increase accounts payable?

A. That is right.

Q. And similarly, he said milk drafts, just add ten thousand to milk drafts?

A. I think he made some statement about an adjustment of five in November and five in December.

Q. Did you see the adjustments of five in November and five in December?

A. I did not, Mr. Obenour.

Q. Did you see the three's that were on the ledger?

A. I didn't look at Mr. Erickson's books. I was working under great pressure then, so I didn't spend much time.

(Testimony of L. Hicks Taylor.)

Q. You just took the two figures and added them as Mr. Erickson told you? A. I did.

Q. And put them on your work sheet?

A. The records were being furnished to me.

Q. Because he said these were left off?

A. That is right.

Q. And went back and looked at the tax return?

A. Compared those.

Q. You were president of the State Association of Licensed Accountants for two terms?

A. Yes. [3970]

Q. And you had kept books since 1919?

A. Yes.

Q. And you didn't figure there was anything wrong with your figures for a year being off sixty-one thousand dollars?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Mr. Obenour: I ask that this be marked, please.

The Clerk: Plaintiff's Exhibit 287 marked for identification.

(Plaintiff's Exhibit 287 marked for identification.)

Q. (By Mr. Obenour): I hand you Plaintiff's Exhibit 287 and ask if you can identify it, please?

A. It appears to be my working papers for the year 1949.

Q. For what company?

A. Issaquah Creamery Company.

Q. Are they your work papers?

(Testimony of L. Hicks Taylor.)

A. I would say, in most cases, yes, that is correct.

Mr. Obenour: All right, sir, thank you.

We offer it at this time, if the Court please.

Mr. Griffin: No objection.

(Whereupon, there was a brief pause.)

Mr. LeSourd: We make the same objection we have to previous documents of this sort, your Honor.

The Court: That is not the last objection? That is the objection as to possession?

Mr. LeSourd: Yes, that is right, your Honor.

The Court: If that is the only objection, the Court would overrule that in line with the other rulings of the Court.

May I see that a moment?

And will be admitted.

(Plaintiff's Exhibit No. 287 admitted in evidence.)

Mr. LeSourd: Admitted, your Honor?

I wish to raise this additional matter, that these are being offered now in connection with the testimony of the year-end 1949 adjustments, and I wish it be understood they were not so limited. If not so limited, we would have other objections to make.

Mr. Obenour: They are for the year 1949.

Mr. LeSourd: For the year-end adjustment?

Mr. Obenour: Yes.

The Court: Even though they cover other periods why you are offering them for that [3972] purpose?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: It is my understanding they are admitted for that period.

The Court: They are admitted, and you have other general objections which you stated first, and the Court overruled.

Mr. LeSourd: Yes.

The Court: And I take it there is no other purpose than you indicated, you have no other objection?

Mr. LeSourd: No, as long as they are admitted subject to the limitation that they are bearing only on the December 31st adjustment.

Q. (By Mr. Obenour): Handing you Plaintiff's Exhibit 287, and calling your attention to the bottom-most sheet, is that your trial balance for the Issaquah Creamery for the month of January 31, 1949? A. Yes.

Q. Was this prepared in a similar manner to that you described you prepared the December 31st, 1949, work sheet? A. Yes.

Q. For Issaquah Creamery? A. Yes.

Q. And, at the end of your preparation, you explained your work sheet to Mr. Forster? [3973]

A. We discussed it, yes, and went through it.

Q. And did you show what the net profit was at the end of January 31, 1949, for that month?

A. Yes.

Q. What was the net profit?

A. $18,544.84.

Q. Did he object to the profit he made in January, 1949, of $18,000-plus?

(Testimony of L. Hicks Taylor.)

A. Well, it is a little hard to remember conversations. Sometimes he would say that that was a little strong, and such as that.

Q. Strong in what way?

A. A little high for the period, or something to that effect.

Q. Would you make adjustments?

A. Not unless he instructed or directed it.

Q. Did he instruct you or request you to make other adjustments?

A. Oh, it is hard to name any particular item.

Q. Can you remember any other times Mr. Forster instructed you to make any other adjustments because of the net profit figure?

A. No, not definitely. I haven't a remembrance of it.

Q. And the next page? [3974]

The Court: That page you are referring to was November?

Mr. Obenour: No, sir; January 31, 1949.

Q. (By Mr. Obenour continuing): And the next figure, is that the trial balance you prepared for Issaquah Creamery for the month ending February 28, 1949? A. Yes.

Q. And was this prepared in the same manner as the work sheet for December 31, 1949?

A. Yes.

Q. At Issaquah Creamery Company?

A. Yes.

Q. And did you discuss it with Mr. Forster when it was completed? A. Yes.

(Testimony of L. Hicks Taylor.)

Q. And did you discuss the net profit figure at the end of February, 1949?

A. It is my recollection we did, yes.

Q. And what is the net profit for the end of February, 1949, for the two months in 1949?

A. $37,598.07.

Q. Did Mr. Forster object to that net profit figure? A. I don't remember that he did.

Q. Did you make any adjustments after that?

A. No other adjustments were made.

Q. The next page of that, is that the trial balance prepared by you for Issaquah Creamery for May 31, 1949—at one place—and 1948 in the other?

Mr. LeSourd: March or May?

Mr. Obenour: May 31, 1949.

A. Yes.

Q. (By Mr. Obenour): And did you prepare this in a similar manner? A. Yes.

Q. Did you discuss it with Mr. Forster?

A. In our usual discussion, yes.

Q. And did you discuss the net profit figure?

A. Yes.

Q. And what is the net profit figure for that portion of the year, 1949, as of May 31st?

A. It showed $83,465.50.

Q. $83,465.50? A. Yes.

Q. And that was for May 31st?

A. Yes.

Q. Five months; did he object to that figure?

A. I do not recollect his comments on it.

(Testimony of L. Hicks Taylor.)

Q. Did you make any adjustment at the end of May 31st when you had a profit of $83,000? [3976]

A. No, there is no adjustment displayed here.

Q. What is the next paper you prepared, please? Is this a trial balance for Issaquah Creamery prepared by you for June 30, 1949? A. Yes.

Q. Did you prepare this in the same manner as the others? A. Yes.

Q. And discuss it with Mr. Forster?

A. Yes.

Q. And what is the net profit figure for the year? A. $113,585.75.

Q. $113,000; did Mr. Forster object to that profit figure? A. Not that I recollect.

Q. Did you make any adjustments to the profit at the end of June, 1949?

A. No, no change made.

Q. And the next paper, is that the trial balance sheet for Issaquah Creamery prepared by you for the month ending July 31, 1949?

A. It is.

Q. And was this prepared and discussed in the same manner? [3977] A. Yes.

Q. What is the net profit figure?

A. $134,538.02.

Q. That is for the year 1949 up to and including July 31st? A. Seven months, yes.

Q. Did Mr. Forster object to this figure?

A. I do not remember.

Q. And were any adjustments made?

A. No.

(Testimony of L. Hicks Taylor.)

Q. And in August, is that the trial balance for the Issaquah Creamery prepared for August 31, 1949? A. Yes.

Q. And was this handled in the same manner?

A. It shows $136,243.57.

Q. Did Mr. Forster object? A. No.

Q. And the next time, September?

A. It shows $142,000 and no changes.

Q. Did Mr. Forster object to that one?

A. No, I don't recollect he did.

Q. And no adjustments; and finally, October?

A. October, it shows a net profit of $131,087.16 and a loss for the month of $11,000.

Q. Was there objection to that? [3978]

A. I do not remember of it.

Q. And November, do you recall what that showed? A. No, I do not.

Q. Handing you Exhibit 159—259-A, rather, the work sheet for November, what is the figure?

A. The figure shows $121,133.54, a loss of ninety-nine hundred dollars.

Q. So that then you had, at the first of December, a figure of $131,000? A. No.

Q. Or one hundred twenty-one thousand?

A. One hundred twenty-one thousand.

Q. And your recollection is what then at the end of December?

Mr. Keesling: Objected to. Recollection of what?

Q. (By Mr. Obenour continuing): Recollection of the net profit figure for December 31, 1949?

Mr. Cox: Before or after adjustment?

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour continuing): Before adjustment. A. $101,000.

Q. How did you believe that you could have computed the figures throughout the entire year of [3979] increasing net profits month by month and still have a sixty-one thousand dollar error?

Mr. LeSourd: Objected to, your Honor, the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Would you explain, if you would, please, what your understanding was of the error of your calculations of the increasing net worth through the entire year?

Mr. LeSourd: I object to the form of the question, assuming there was an error.

Mr. Obenour: The error, if the Court please, was the explanation of why they made the adjustment.

Mr. LeSourd: Maybe I am confused about the question. Could we have it read back?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. LeSourd: I renew my objection.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Mr. Forster told you that your figures were in error?

A. He did, yes.

Q. And you made a $61,000 adjustment? [3980]

A. I was given the figures to make the adjustment.

(Testimony of L. Hicks Taylor.)

Q. You adjusted your work sheet $61,000?

A. That is correct, $51,000.

Q. $51,000; you were given a $51,000 and a $10,000 figure?

A. Yes, but $51,000 was the change.

Q. Would you explain what your understanding was as to why you should adjust your figures $51,000?

A. By accounts payable that had not been entered.

Mr. LeSourd: I will object to this as all repetitious.

The Court: Objection sustained. I think we have gone over it several times.

Mr. Obenour: May we recess then, your Honor?

The Court: Have you nothing further?

Mr. Obenour: Yes, but it is only three minutes.

The Court: You prefer to recess now?

Mr. Obenour: Yes.

The Court: Ladies and Gentlemen of the Jury: We will recess until this afternoon at 1:45. The Court calls your attention to the admonition given you on similar occasions, and asks that you heed the admonition on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

The Court: You may step down, Mr. Taylor.

The Witness: Thank you.

The Court: Court will recess until 1:45.

(Whereupon, at 12:13 o'clock p.m. a recess

(Testimony of L. Hicks Taylor.)

was had in the within-entitled and numbered cause until 1:45 o'clock p.m. April 15, 1954, at which time, counsel and defendants heretofore noted, being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Obenour.

Mr. Obenour: We have no further questions, if the Court please.

The Court: Mr. Griffin?

Cross Examination

Q. (By Mr. Griffin): Mr. Taylor, is it an entire summary of your testimony on direct and cross-examination to say that you at no time—that you were the accountant, performing the services that you did for Mr. Forster and his various enterprises—that you at no time consciously [3982] assisted in any evasion of income taxes on the part of Mr. Forster or any of his companies; is that a fair statement?

A. That is a fair statement, yes.

Q. And is it a fact that you did not?

A. Do I——

(Testimony of L. Hicks Taylor.)

Q. (Interposing): I say, it is a fair statement, and a fair statement of fact, that you did not consciously assist in any wise, in the evasion of income, if there was evasion?

A. To the best of my ability, I tried to make correct tax returns.

Q. Now, last evening when we closed, and this morning, again,—that is why I am referring to it—was the matter of the Morris, Daisy Ice Cream, transaction, terminating in the purchase by Mr. Morris of a piece of real estate from Mr. Forster. Do you have that in mind, your testimony in that regard?

Mr. LeSourd: Just a moment, your Honor, may we have the same objection to Mr. Griffin's questions on this subject as to Mr. Obenour's?

The Court: As far as the Court is concerned, it is agreeable. Any objection?

Mr. Griffin: No objection.

Q. (By Mr. Griffin continuing): You have your testimony in [3983] mind in that particular as of this morning and last evening, do you, Mr. Taylor?

A. Yes.

Q. And, as I understood your testimony, the purchase price of the property by Morris and the sale by Mr. Forster was $14,500?

A. I so testified.

Q. And, therefore, there was no one thousand dollars involved, as the Government attorneys tried to show that was not shown on the income tax return?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Objected to, your Honor, as an improper summary of the testimony. There was one thousand dollars involved, which he testified as not the purchase price of this property.

Mr. Griffin: I think that is my very summary of that question. I said not as the Government attempted to show.

Mr. LeSourd: That doesn't make it clear.

Mr. Griffin: I will endeavor to make it clear, if the Court please.

Q. (By Mr. Griffin continuing): The sale price was $14,500, and the sale price of $14,500 was used by you in your computation of the income tax return as the difference between a purchase price of ten thousand dollars and [3984] a sales price of $14,500; that is a fair statement, isn't it?

A. I so testified to that.

Q. And Mr. Forster knew of no purchase price outside of $14,500 as far as you know, did he, from Mr. Morris?

A. My testimony was that Mr. Forster, Mr. Morris and Mr. Taylor all understood it as $14,500.

Q. Yes, sir; and you referred two or three times to $14,500 being the contract price. Actually, the property was sold for cash, was it not?

A. I do not know.

Q. Didn't you handle the entire transaction of that sale? A. In Morris' sale?

Q. No, Mr. Forster's sale. I am referring to some real property.

(Testimony of L. Hicks Taylor.)

A. The transfer of the title of the property to Mr. Morris, yes.

Q. And you prepared the deed of sale for that property, didn't you?

A. It is possible. I am not—from memory, I am not sure but I believe it is possible.

Mr. Griffin: Is the next exhibit A-80?

The Clerk: You want Exhibit A-80? [3985]

Mr. Griffin: No; is the next exhibit A-80?

The Clerk: I will check it.

Mr. Patten: Yes, sir.

Mr. Griffin: Thank you.

The Clerk: Yes, A-80.

Q. (By Mr. Griffin): And Mr. Morris actually paid to you for Mr. Forster the cash that was paid for the property, didn't he?

A. Paid the cash?

Q. Yes, there was a difference in cash in the sale of the Morris property, of the Forster property to Mr. Morris; there was a cash payment made by Mr. Morris in a certain amount, wasn't there?

A. It wasn't made——

Q. (Interposing): To make up $14,500?

A. It wasn't made to me. I never handled that part of it at all.

Q. You never handled any of the cash on it?

A. Not to my recollection.

Mr. Griffin: Will you mark this?

The Clerk: Defendants' Exhibit A-80 marked for identification.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-80 marked for identification. [3986]

Q. (By Mr. Griffin): Handing you Exhibit A-80 for identification, I will ask you what that is, Mr. Taylor?

A. This is a letter to me.

Q. From whom? A. Mr. Morris.

Q. What date?

A. Dated January 24, 1946.

Q. I note some writing in pencil as opposed to pen; do you know whose writing that is?

A. That is my writing.

Mr. LeSourd: If your Honor please, we have simply the same objection to this as our standing objection.

The Court: On improper——

Mr. LeSourd (Interposing): Improper cross-examination.

The Court: No objection apart from that?

Mr. LeSourd: No objection apart from that.

The Court: That general objection may show and the Court would overrule it.

Mr. Moriarty: No objection.

Mr. Obenour: No objection.

The Court: A-80 may be admitted.

Mr. Keesling, any objection? [3987]

Mr. Keesling: No objection.

The Court: A-80 may be admitted.

(Defendants' Exhibit No. A-80 admitted in evidence.)

Mr. Griffin: May I read? Before I do that:

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Griffin): Do you recall that you assisted in getting $500 more for that property than the original Morris offer of $14,000?

A. Very well.

Q. Mr. Morris was in a spot in his business setup and had to have the property, didn't he? That is, he thought he did?

A. I haven't any recollection except as mentioned in that letter, I believe.

Mr. Griffin: May I read A-80?

"Hotel Vancouver, Vancouver, B.C., January 24, 1946.

"Dear Mr. Taylor:

"I tried several times to call you before leaving Seattle but failed to connect.

"It is very important that we complete that deal at an early date, as we are being pushed off from the property where we are now at, so therefore, I am asking that you have [3988] the deed complete as I shall call at your office between 3:00 and 4:00 p.m. Monday, the 28th, and I shall have the cash to take care of the balance.

"Please do not fail me.

"Very respectfully, Frank L. Morris."

Q. (By Mr. Griffin): And you have identified the pencil writing on there, "Quite a traveler"?

A. That is correct.

Q. Does that refresh your recollection that Mr. Morris brought the cash to your office, and received the deed from you?

A. My recollection is that Mr. Forster and Mr.

(Testimony of L. Hicks Taylor.)

Morris were both there. The deed was probably prepared maybe before, if I had the description of the property. Mr. Morris turned the cash over to Mr. Forster, and not to me.

Q. How much was that cash?

A. I don't know whether it was cash or a check. I have no remembrance of it.

Q. But the sale price, of course, was $14,500 as you testified?

A. That is correct, $14,500.

Mr. Griffin: Will you mark this for identification, [3989] please?

The Clerk: Defendants' Exhibit A-81 marked for identification.

(Defendants' Exhibit A-81 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-81 for identification, I will ask you if that is your signature?

A. That is my signature, yes.

Mr. LeSourd: Are you offering this?

Mr. Griffin: Yes.

Mr. LeSourd: We make the same objection to this, your Honor.

Mr. Moriarty: No objection.

The Court: The general objection then may show as being beyond the scope of cross. Is there any other objection?

Mr. LeSourd: Just a moment.

(Whereupon, there was a brief pause.)

Mr. LeSourd: That is the only objection.

(Testimony of L. Hicks Taylor.)

The Court: That general objection may show. The Court will overrule it. There being no other objection, A-81 may be admitted.

(Defendants' Exhibit No. A-81 admitted in evidence.) [3990]

Mr. Griffin: May I read it, if the Court please?

The Court: You may.

Mr. Griffin:

"Seattle, Washington, December 18, 1945.

Receipt is hereby acknowledged of $500 (five hundred dollars) to apply on the purchase of one certain half block located on Second Avenue North between Mercer and Roy Streets in the City of Seattle, known as Lots blank Block blank, Mercer's Addition to the City of Seattle, for a price of ($15,500) Fifteen Thousand Five Hundred Dollars. Delivery of deed and Title Insurance to be made as of January 10, 1946."

Signed, "Frank L. Morris, Purchaser."

"Hans Forster, Seller."

The signature of "L. Hicks Taylor, for Seller."

Q. (By Mr. Griffin): Mr. Taylor, what did you do with that extra one thousand dollars?

A. That extra one thousand dollars was applied against the contract Mr. Forster had with Daisy Ice [3991] Cream purchase.

Q. What was the sale price of this property?

A. $14,500.

Q. The property that you—you prepared this receipt, didn't you?

A. Yes, but though there should be other papers

(Testimony of L. Hicks Taylor.)

that join that. Have you been able to find them in my working papers?

Q. What other papers are there, Mr. Taylor——

A. (Interposing) There should be other——

Q. (Continuing) ——that will show, any paper or document that you have that contradicts the receipt of the sales price of that property at $15,500?

A. There was adjoining papers to attach to that and were with it at some time, in my—among my working papers.

Q. Attached to that, Mr. Taylor, was Exhibit 80. Have you any other document in mind?

A. No, I don't, right offhand, but there was an explanation of that in some way, I think.

Mr. Griffin: All right, the third paper. Will you mark this for identification, please?

The Clerk: Defendants' Exhibit A-82 marked for identification. [3992]

* * * * *

Direct Examination

Q. (By Mr. LeSourd): Mr. Taylor, at the time you went to McNeil Island, what did you do, if anything, with your files of correspondence, working papers and other documents related to Mr. Forster's enterprises?

A. I assembled them very carefully by years, and arranged the ledger and work papers, so that without any great effort, any accountant or Internal Revenue man could have gone to those files and if he had of gone into them carefully, could have

(Testimony of L. Hicks Taylor.)

picked out the work papers that applies to the ledger, and the copies of the income taxes, and could have made a definite audit of the records there.

Q. Now, included—when you say—you say you assembled those. How did you put them in?

A. I put them in cardboard cartons in consecutive order, and they were labelled so that they could find the things if they would go into them with any intelligent idea of obtaining proper information.

Q. Did these boxes contain anything other than your working papers?

A. They contained papers of different types that I had of Mr. Forster's, and my papers that were assembled together, and those were in separate jackets of their own.

Q. And what type of papers were these other papers that you speak of?

A. Letters, agreements that happened to have been in my possession and various papers of all types.

Q. When you say "letters," would you state whether or not that includes correspondence to you?

A. Yes, correspondence to me.

Q. Would you state whether or not that includes your copies of outgoing correspondence?

A. Yes, it would include some of my copies of outgoing correspondence, too.

Q. When you say "agreements," and other matters, would you state whether or not that would include your copies of the various agreements that have been drafted or worked on by you?

(Testimony of L. Hicks Taylor.)

A. Yes, it would contain those, also.

Q. Would you state what the fact is as to whether or not these boxes contained all of your correspondence and other documents relating to Mr. Forster's enterprises? [4008]

A. They included everything that I had. I carefully went through them, and anything pertaining to Mr. Forster or his enterprises were placed in these boxes, so that they would be at their disposal, and I might add this, that when I turned those boxes over, I spoke to Mr. Forster, and stated that if anybody wants to examine them, you had better get in touch with me and give me a chance to explain the boxes, or possibly I could be present and help them get into them.

Q. Was anything—when was this, and to whom did you say this?

A. At the time that I delivered the boxes to Issaquah Creamery Company's office. I told Mr. Forster, and I also mentioned it a little to Mr. Erickson. I don't know whether I did as conclusively to Mr. Erickson as I did to Mr. Forster.

Q. Was anything said with regard to what would happen to these boxes when you got out of McNeil?

A. I told him that the reason I was including it all was that we could pick them up when I returned, and go on with the work.

Q. Now, handing you Defendants' Exhibits A-80 and A-81 and A-82, can you tell us whether or not those were included in your files that were so boxed and delivered?

(Testimony of L. Hicks Taylor.)

A. It is my recollection that they were. [4009]

Q. Were any of these files ever delivered back to you? A. They were not.

Q. Have you had occasion to examine any documents from those files at any place since you got back from McNeil?

A. On our trip to Tacoma on April 25th, with Mr. Kachlein, the audit of the books by Mr. Marx was discussed. I asked Mr. Kachlein if Mr. Marx would not wait until my return before the audit, and he informed me that Mr. Marx would not work with me, and I said, "If possible, it would be well if I could," and he said, "Mr. Marx won't work with you."

Q. Well, now, Mr. Taylor, my question was whether you at any time since coming back from McNeil have seen any documents other than being introduced here in court, taken from these boxes that you left at Issaquah?

A. I probably have when I went before the Internal Revenue to have a hearing with them when I made a statement.

Q. In other words, you have seen certain documents in the possession of the Government?

A. I have seen those documents.

My other files have not been available to me at any time. [4010]

Mr. LeSourd: Just a moment.

(Whereupon, there was a brief pause.)

Mr. LeSourd: That is all, Mr. Taylor.

I would like to put Mr. Cox on the stand.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Are we bound by his answers?

Mr. LeSourd: Excuse me.

The Court: I take it it is primarily between the two defendants.

Mr. Patten: I would like to ask two questions.

The Court: All right.

Cross Examination

Q. (By Mr. Patten): When you delivered these documents to the Issaquah Creamery Company, Mr. Taylor, you intended them for use of the Government agents, didn't you?

A. I felt in delivering the documents there if audits came into being—they were not in being then when I delivered the documents. Mr. Marx had not called. My thought was to follow the procedure that former agents have had, and I arranged the documents so that if a man picked up the 1945 ledger, here was everything pertaining to 1945 following it. I arranged them that way very carefully, and spent considerable time doing it.

Q. Yes, sir; but your purpose was to make them available to the Government agents who might want to inspect the books?

A. That is correct, because I didn't know what my position would be, after going to McNeil, whether I would be free to come and assist, or what would be the picture.

Mr. Patten: That is all.

(Testimony of L. Hicks Taylor.)

Cross Examination

Q. (By Mr. Griffin): At the time you went to McNeill Island, you had a business office here in Seattle, Mr. Taylor? A. I did.

Q. And that office continued during the time that you were under sentence at McNeil Island?

A. That is correct.

Q. And was open to you when you came back?

A. Yes.

Q. And also maintained your home here in Seattle during all that period of time?

A. Yes, sir.

Q. So what you did was to gather all of the books, records and documents, income tax returns, other tax returns, every paper and document that you could find that dealt with Hans Forster or his enterprises and placed [4012] them in boxes, and took them out to the Issaquah Creamery Company before you left for McNeil, isn't that correct?

A. Because of my great confidence in Mr. Forster, our close friendship, as I thought, and a genuineness of Mr. Forster, I felt that I could trust and place those files in his office, and not be subject to what I have been put through at the present time.

Q. You were not endeavoring to conceal anything, were you?

A. There was nothing concealed. You have every scrap of paper, and you have been playing with it here for four years.

Q. And the purpose of placing it there was for the use, as you now testify, of the Government

(Testimony of L. Hicks Taylor.)

agents and also for the use of any accountant that Mr. Forster might employ, weren't they?

A. That was not the thought. The great portion of those papers were my personal working papers that Mr. Forster had no authority to have.

Q. I think you testified before today that the working papers were part of the ledger and you sat on the witness chair, did you not, asking for the working papers so that you could explain the ledger?

A. That is correct, from an explanatory standpoint [4013]

Q. So the reason that you took the working papers out was because they were necessary for anyone to understand your ledger, weren't they?

A. That is true for the year-end closing sheets but none of the rest of the working papers were any of Mr. Forster's authority, they were my personal working papers.

Q. Did Mr. Forster ask you to bring out your working papers?

A. He did not ask me to. I did it as a matter of being just to Mr. Forster, under the conditions.

Q. That is, you voluntarily left all of these documents that are in question at the Issaquah Creamery before you went to McNeil Island?

A. I wouldn't say voluntarily. I placed them there for the convenience and possible aid and help to Mr. Forster if investigations of any kind came up, if I could not assist.

Q. Did you take them out yourself?

(Testimony of L. Hicks Taylor.)

A. I took them out in my car, and put them in the place assigned me by Mr. Erickson to place these files.

Q. In case of an investigation by either the Government or other auditors, did you consider these papers necessary to a full understanding of your work? [4014]

A. At any time an audit was made in my office, I always produced all those papers and assisted in every way that I could to aid those making an audit, and I never had any trouble at all, didn't have a lot of grief checking those papers. They wouldn't have had in this case, if I had been present.

Mr. Griffin: Your Honor, may I have the question read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. They would assist, yes.

Mr. Griffin: That is all.

The Court: Mr. Keesling, any questions?

Mr. Keesling: No.

(Witness excused.)

Mr. LeSourd: All right, I will call Mr. Cox at this time.

The Court: I might say in regard to the testimony of Counsel, that if it relates to the question of having an opportunity to inspect the Court, of

course, would grant full opportunity for full inspection, but if this has to do with anything further——

Mr. LeSourd: (Interposing) That would be on that matter.

The Court: I think the only question involved there, [4015] Mr. LeSourd, is whether or not you have had a full opportunity to inspect. Is that not right?

Mr. LeSourd: Well, whether the documents were presented to us for inspection.

The Court: I see.

Mr. LeSourd: We had an opportunity to inspect certain documents presented to us, but the issue is whether they were presented to us for inspection.

The Court: If I may inquire, assuming that they were not, and that you didn't see them, or assuming that they were and that they were otherwise admissible, is there anything you couldn't ask for now and have whatever time you need on inspection of the documents?

Mr. LeSourd: That would be a problem, of course, your Honor. We think in addition it all goes to the fundamental situation here as to privilege.

The Court: If you feel it is essential for your record that is satisfactory. I just wanted to advise you what I would do under the circumstances, but if you feel it should be in the record, I would follow your judgment, and I wouldn't be inclined to prevent Mr. Cox arguing the case before the Jury if he should desire.

Mr. Cox: It is in the absence of the jury.

The Court: Yes, it is in the absence of the jury.

Mr. LeSourd: I would like to make the [4016] record on this, if your Honor please. [4017]

KENNETH COX

upon being called as a witness for and on behalf of the Defendant Taylor, and upon being first duly sworn, testified as follows:

Direct Examination

Mr. LeSourd: Before commencing, may I, on this latter point, this not being before the jury, I take it it would not prevent Mr. Cox from continuing as counsel in the case. If there is any question about that,——

The Court: (Interposing) Question might be raised. I would not on my own be inclined to take any action. I don't know if counsel would want to be heard or not.

Mr. LeSourd: It is not anticipated he will make final argument to the jury, but he may participate in the case otherwise.

The Court: Do Counsel feel, for any reason, it would disqualify him?

Mr. Moriarty: I don't think so, your Honor. We would not make any objection.

The Court: Mr. Griffin?

(Whereupon, there was a brief pause.)

Mr. Griffin: I would rather not be called upon at this point. We have had to remove one counsel

(Testimony of Kenneth Cox.)

from this case, and I am not very generous right at the present [4018] moment.

The Court: I think it is a matter for the Court to determine, and I won't—unless—of course, Counsel can make the objection. I will advise you I wouldn't be inclined to request that he desist in participation.

Mr. LeSourd: If there is any question about it, and in view of your Honor's own feeling about the testimony, I will not offer Mr. Cox as a witness.

Mr. Moriarty: For the record, Mr. LeSourd, there is no claim that the Government has not made records available at all times?

Mr. LeSourd: No. I make no such claim.

Mr. Moriarty: The record may so show.

Mr. Patten: I would like the record to show that.

Mr. LeSourd: And I would like to call Mr. Kachlein.

(Whereupon, Mr. Cox withdrew from the witness chair.) [4019]

* * * * *

The Court: I might state, Gentlemen, I don't believe that on the showing made that the Court would sustain the objection or would strike the documents. I believe they are admissible, and, of course, you have your general objection as to being beyond the scope of cross-examination.

Now, as to time, of course, to inspect further.

Mr. LeSourd: I didn't hear that.

The Court: As to time to inspect or have access, that is another question.

Mr. LeSourd: I would like to have them produce everything they have in their possession so that we can examine all those documents and that [4039] they be made available to us. We don't ask that the trial be adjourned in any way.

Mr. Griffin: If the Court please, perhaps this record had better show the number of times that all these documents were offered to counsel for inspection. I have prepared my cross-examination trying to save time here with documents in line with my cross-examination and I do not propose, unless directed by this Court, to interrupt my cross-examination by delivering documents, impeaching or otherwise, as this one has been, to Counsel.

The Court: I do not anticipate it will interrupt your cross-examination.

Mr. LeSourd: No, but certainly, your Honor, we should have the right to examine the documents.

The Court: You should have the right to examine the documents before you go on with redirect.

Mr. Cox: We should have the right to examine them today.

Mr. LeSourd: Yes, immediately when we suspend.

Mr. Griffin: I do not propose, unless the Court directs, to have this witness prepared.

The Court: A document used for impeachment——

Mr. Cox: (Interposing) You mean we can look at [4040] the others that are discarded?

The Court: What was that?

Mr. Cox: You mean we can look at the other ones now left in the files?

Mr. Griffin: Certainly, no objection to that at all.

Mr. LeSourd: If these are documents from Mr. Taylor's files left out there, it certainly seems to me we have the right to see all of them at any time. And if we have that right——

The Court: (Interposing) You mean impeaching documents?

Mr. LeSourd: Yes, if it was a part of Mr. Taylor's personal files that he was entitled—that we have been entitled to see all this time we certainly have the right to have that shown to us.

The Court: I understand, Mr. LeSourd, that you might be interested in looking for other documents in accordance with Mr. Taylor's statements that there were other documents in the file that might serve to explain.

Mr. LeSourd: That would be one thing.

The Court: I didn't anticipate at any time that an impeaching document might be disclosed before it is used.

Mr. LeSourd: If it is not to be disclosed, [4041] we are in a position where the other defendant has secured personal files of this defendant and without disclosing them, and can go ahead and use them in this trial and I think that would be highly improper and unconscionable.

The Court: I frankly don't see that. What you are asking is that you see everything they have.

Mr. Le Sourd: Everything they have that was taken——

The Court: (Interposing) That they propose to use or otherwise?

Mr. LeSourd: Everything they have that was taken from Mr. Taylor's personal files.

The Court: In advance of use?

Mr. LeSourd: In advance of use, yes, sir.

The Court: Which would include, of course, impeaching documents.

Mr. LeSourd: It might.

The Court: I would say that you have—you should have permission to see documents generally other than impeaching documents, but impeaching documents lose their value, do they not, when they are disclosed?

Mr. LeSourd: I have not thought that one defendant in a case like this could secure possession of personal files of another defendant and hold them and not [4042] disclose them for examination by counsel—by the other defendant or by counsel for the other defendant and use them in a trial in this manner.

The Court: Well, of course, they have been made available.

Mr. LeSourd: That is the question, your Honor. Certainly, when I was over there, they were not available. I went through every—Mr. Cox and I went through every file on the table when I visited Bogle, Bogle and Gates. If there are documents that we are not aware of in Mr. Taylor's personal files, we certainly ought to have the right to use them.

Mr. Griffin: If the Court please, a direct attack

has been made upon Mr. Kachlein, one of the most fantastic defenses I have heard that I am prepared to meet. Now, it is stated that they didn't see certain papers that we are going to use. These gentlemen, I think, three times went through these files. I went through them several times in the jumble they were in and I found something new that I thought might be useful practically every time as regards Mr. Taylor.

Now, if they couldn't use their eyes or realize those things we are going to use, I don't think that should reflect upon the office of associate counsel when they were on the same table that I used, but I will [4043] say that it took me hours of more than one day to go through these files, time and time again.

Mr. Cox: If the Court please, in regard to the statement made by both Mr. Griffin and Mr. Brody, the first occasion when we visited the office of Bogle, Bogle and Gates, Mr. LeSourd and I were present. We were then shown certain documents that were extracted from the contents and asked if we would stipulate as to their admission. As Mr. LeSourd stated, we examined those documents and these were not included, and we asked where the rest of the files were, and we were advised that some were at Mr. Griffin's home, or possibly in his garage, and that some may have been in the office at that time. We asked if we could examine those. They agreed that we could come at a time suitable to both of us. I visited the office that time and spent, I would say, an hour and a half or two hours going through

them. There were a good many of them. I can't claim that I looked at every document in all the cartons, but I did look for certain things we were interested in, and this Daisy Ice Cream was certainly one of them. I visited the office on a second occasion, at which time I had heard some mention of a difference of one thousand dollars, and I was certainly looking for anything I could see at that time that bore on that [4044] issue.

After I completed that investigation, I asked Mr. Brody whether there were any other documents originally in those files that were not now there, and he said there was nothing—and this was subsequent to the commencement of this trial—outside of that which had been there, outside of what was shown to Mr. LeSourd and myself when we were first in his office. That is the extent of the examination made.

I agree with Mr. Griffin that by that time, in January, 1950, nearly four years after they were delivered to Issaquah, they were in a jumble, but that the examination which was made with respect to items for which I had any reason to be looking was sufficient to have disclosed them if they were there, and as to the question specifically raised, this being after commencement of this trial, apparently it is Mr. Brody's contention that this was discovered after that, and removed from the file, otherwise he would not be in a position to examine them, I would say, sometime in February.

Mr. Griffin: Before Mr. Brody answers, you may be interested, your Honor, in why some of these

noted, being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin. [4048]

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination (continued)

Q. (By Mr. Griffin): Mr. Taylor, having receipted, on December 18, 1945, for $500 on the purchase price of this property of $15,500, and the sale price, you say, is $14,500, what became of that extra $1,000 on the purchase price?

A. My recollection of this transaction was that the $1,000 was to apply against the Daisy Ice Cream purchase. The real estate was to be sold for $14,500. That was my remembrance, which is as clear as if it happened yesterday.

Q. I think you said you prepared the deed?

A. I am not positive, but I believe I must have.

Q. And you purchased the revenue stamps for the deed, didn't you?

A. That I rather doubt.